(Wednesday, 11 October 2023)
(10.32 a.m.)
MRS JUSTICE COLLINS RICE: Good morning. Can I start by thanking you both for the incredibly useful material that you sent over yesterday afternoon. I have had an opportunity to digest and think about that. And I am sure we will go much quicker today as a result, so, thank you.
MR WALKER: I understand my learned friend has a matter she wishes to raise.
MS EVANS: It is not a matter; it is just a piece of correspondence that needs to go in the back of your bundle, so it is up to date.
MRS JUSTICE COLLINS RICE: Right.
MS EVANS: It is to do with - do you remember the late disclosure last week?
MRS JUSTICE COLLINS RICE: Oh, yes.
MS EVANS: I do not think anything turns on it, but it is just so you have a complete run, the same as everyone else.
MRS JUSTICE COLLINS RICE: And this is objected to or not?
MR WALKER: No, it is not objected to. I confess, I feel somewhat at fault because my

Lady will recall the way this manifested itself. I deferred to my learned junior Ms Grossman, rather quickly and I know that the point that the defendant's representative seeks to make does not seek to criticise Ms Grossman for being put in a position by her leader, which was a bit quick. She was of course attempting to assist the court. And if there is any issue then I will take it on the chin as my fault.
MRS JUSTICE COLLINS RICE: Thank you.
MR WALKER: May it please my Lady, I quoted Einstein in my opening address to the court and the quote was about simplicity if you recall, and I am upping the quotes stakes a notch. I am going to defer to the greatest genius this country has ever produced to assist the court. That is, of course, Sir Isaac Newton. And before revealing how Newton might assist the court, I suspect my Lady may have noted the contrasting length between the claimant's 24 pages of submissions and the 179 pages of material provided by the defendant to assist the court.

Well, I submit, Newton's quote is exactly on point, prophetic, almost in terms of the matter before the court. It reiterates the point made on behalf of the claimants in opening by me. He said this, "Truth is ever to be found in simplicity and not in the multiplicity and the confusion of things".
My Lady will have had the chance to look at the submissions provided on behalf of the claimants, and I do not intend to simply regurgitate them. Neither do I intend to detain the court for anything like the half day that I believe has been allotted to closing submissions. I do not need to. As I submitted in opening, this case is simple. This case is apparently not about a Twitter spat, according to the defendant's closing submissions. Yes, it is. It is about a failure, a failure of communication on a platform that monetises such disputes. It is about claims made that are demonstrably and on the documents themselves, untrue. It is about intemperate exchanges that might happen within an online playground.
Serious harm. The defendant has accused

Daniel Miller and Nina Power of death threats, violent threats, harassment, antisemitic harassment and some other matters, misogyny, transphobia. I will use the names of the parties interchangeably, but in my submission, it is worth using the names of the claimants at this stage, because these are not just words. They are not just sounds and utterances. These are allegations which have the effect of wounding and serious harm by their very nature. Who amongst us, I ask rhetorically, would not shun and avoid someone of whom these allegations are made. These actions would read, to many, I submit, as keynoting criminal activity. And the tagging in on many occasions of the Metropolitan Police underscores that impression and is deliberately calculated to add a veneer of authenticity. I will come to that in due course, but these allegations are made on a public web page, used by a prominent artist for the promotion of his work. They are made on Twitter where he had more than 12,000 followers, a public account where the allegations were available

to the world at large.
The defendant was a prominent member in the art world. That is not challenged, that is actually put forward by the defendant himself. And it is at this point I pause to say, to point out, part of my cross-examination of both the defendant and also the police officer was to highlight his repeated association with a famous actor. The claimants operated in that world, and you heard their evidence about what that world is like and its particular sensitivities. You heard the claimants say that they were shunned and avoided, that by the nature of what happened to them, that they could not readily ask people to identify what the issue was. Nonetheless, that can be readily inferred. One example given was Adam Lehrer, who himself lost work because of the most tenuous of connections to Mr Miller. That evidence was given by our clients in the witness-box and is supported by the contemporary statement of Mr Lehrer who wrote on the subject. Some other examples we see in the claimant's witness statement,

the first claimant's book on Andre Bretton was postponed. This was after a publication by the defendant of the "Trial of Preliminary Issues" judgment article, which, you will recall, I took the court to his take on his website of what my Lady had meant. The second claimant was dropped from The Wire magazine.
Serious harm, my Lady, is not to be evidenced according to the laws of physics. Our clients need not prove isolated, specific allegations, publications, causes and effects. In certain cases, involving small scale publication directly to specific individuals, the court have considered that important. This is not one of those cases. It is understandable that the claimants give their evidence in general terms. If there is to be criticism of the length of their statement, in my submission, they are to be commended for setting out the issues. And it is worth pausing - what is the point of being here at The Royal Courts of Justice? What are we here for? Of course, the lawyers try their best and may deploy their skills in the best

way that they can, but ultimately, it is going to be a matter for my Lady.
What was the feeling? What was the impression, on the face of the tweets? What impression did the court gain from the people who gave evidence? In my submission, it is very clear. It is understandable that the claimants give their evidence in general terms and that is to their credit. The claimants also mentioned allegations other than the ones they are suing on. My Lady, the importance of clearing one's name on a charge of death threats and antisemitic harassment is, obviously, important.
The claimants were entitled in law to select the allegations on which they sued. And there are obvious difficulties in suing on allegations such as fascism, which go into the space of a much more general comment, or simply abuse. Our clients do not concede those matters, but they do not pursue them for tactical reasons. Our clients mentioned these because they are upset. This is entirely to be expected; it does not negate or diminish the seriousness of the damage of the

allegations in this case. These allegations were made, we say, to harm the claimants. These allegations were made repeatedly on, using the defendant's own expression, "An open platform, to the world at large". The defendant also, we say, showed by his other actions, both in his own name and those he wished to remain anonymous, that he wanted to harm the complainants. Now, the law does not require that the defendant intended to harm the claimants, but why should the court be astute to avoid finding the defendant liable for what he is straining every nerve and sinew to do? The answer is, my Lady, we should not.
Death threats. Let us go to death threats. The issue for determination is whether Mr Miller made death threats and was under police investigation having made them. There were no death threats. That fact is as plain as the nose on my face. It is plain on the documents, and it is supported by independent evidence, in the form of DS Lockstone and the CRIS report disclosed, quite properly by the Metropolitan Police.

Mr Turner made a witness statement and I know you will have the reference; I will not give every reference but tab 47, 1529 to 1532 - in support of a complaint made by him. This is his statement to the Metropolitan Police. He provided that statement via email himself to PC Kardhashi. The statement written by the defendant contains no reference to death threats by the first claimant. That is a good starting point for what I submit is the absurdity of the claims made in the tweets from the defendant, but there is more. The defendant is called, a "Cocksucker" and a "Shitbag", intemperate insults, maybe, but plainly not death threats. These are the first tweets complained of in the statement to police at paragraph 5, page 1 of that statement. Mr Turner, at paragraph 5 of the following page goes on to complain, as follows, "Mr Miller had directed a flurry of abusive tweets attacking me and each of the people the defendant had retweeted in support of him, posting their photos with misogynistic comments such as, "This is what mental illness looks like"... "The

village idiot speaks"...." Look into these cold black eyes and tell me Luke Turner has a soul", and "You are a grotesque individual, totally devoid of humanity".
As already submitted, none of these tweets, possibly cross the threshold of death threats. Neither do they cross the criminal threshold for any other offence. We heard from DS Lockstone who stated that he read the crime report and the witness statement, but upon reading the tweets themselves, the source material, he concluded, as did his supervising officer, that no criminal offences had been committed. Not death threats, not malicious communication and not harassment, none. Currently, Mr Turner has not complained of a death threat. There are no, at this point in proceedings - if we go back to his statement, there are no records of any death threats throughout the contemporaneous log created, that is the CRIS report and the tweets themselves do not support the claim that Mr Turner deliberately makes in tweets complained of by the first claimant.
What is also correct is that aside from the

intemperate tweets I have referred to, which the claimant accepts and regrets, are unbecoming, the other tweets do not refer, tag, reply or even quote the defendant at all. The reality, in my submission, is that the defendant perceives any comments as relating to him once he is finally triggered and having engaged in the spat.
As we delve deeper, things I submit begin to border on the bizarre. Mr Turner, you will recall, alleges that he has been the subject of misogynistic comments. Firstly, none of the tweets refer to gender. Secondly, the defendant is male. I pause, slightly nervously, but I hope that I am on safe ground when I say that by stating that he cannot himself be the victim of misogyny. That is, in fact, the only concession that the defendant made, that he could not be the victim of misogyny. He did that because he had to, but that is the only concession he made throughout cross-examination.
The use of this word, "misogynistic", is telling because it is symptomatic. It is a symptom of the way the defendant uses

language. He has deliberately used a damaging word with no basis for its application. It is not an isolated incident either. You will recall that Mr Turner alleges to Daniel Keller, that he is the subject of misogyny in their exchanges before he accuses Mr Keller, a Jewish man, of being an antisemite himself. So, it is not just a mistake in the witness-box. To employ the criminal vernacular, "he has form for it"
There are examples on the documents, as I submitted in opening, that illustrates the indiscriminate use of language that Mr Turner understands the power of and uses to make false and defamatory points. The same is true for the death threats and antisemitism. These are words and phrases hurled without thinking, never resiled from and calculated to cause maximum shock, within the professional space that the claimants and the defendant share.
The death threats aspect of the claim assist the court, in my submission, as it is one of the places where, in his statement and his evidence to the court, the defendant is proven

to have lied. DS Lockstone and the CRIS report that he relies upon to assist the court, they are independent sources of evidence. And they illustrate the defendant's propensity to attempt to manipulate events to suit his narrative. The defendant claims, he thought the investigation was ongoing after speaking to DS Lockstone. Secondly, that his continued tagging of the Metropolitan Police Service was not to add a veneer of authenticity to the tweets and further damage the claimant but was the more efficient way of keeping the Metropolitan Police updated. Taking each of those points in turn, DS Lockstone was quite clear. He explicitly told the defendant that the investigation would go no further and gave him an explanation. He referred to the CRIS report where he logged the conversation. He could not be mistaken. Not only did DS Lockstone explicitly tell the defendant that he noted within that CRIS report that the defendant understood. This is the entry made by DS Lockstone at page 800 of the bundle, "I have had a lengthy conversation with Mr TURNER today and

informed him of the above rationale and that this report will be closed. He is understanding of the police position".
The court, my Lady, need not necessarily find that the defendant's evidence was anything other than unsatisfactory. However, it is this aspect of the independent evidence that was unchallenged by the defendant in re-examination but illustrates he has lied. My Lady will also recall two other matters that DS Lockstone assisted with. The defendant was given advice on civil remedies to pursue if he was concerned. The defendant did not seek to utilise them and claims, despite his means, that the cost was prohibitive for him in doing so. That explanation is not the simplest and neither is it the truest. The defendant was contacted on various occasions via email and phoned by DS Lockstone. Despite the defendant's state of what he agreed was one of hypervigilance, he chose not to get back in touch. We know that at that time he was not engaged in the business of art or his role as a director of Turner Bianca. The defendant's claims of

death threats and the tagging in of police are exposed on the documents available as not just being inaccurate, but plainly and demonstrably, false.
His further claim that tagging the Metropolitan Police was the most efficient way of keeping the Metropolitan Police Service up to date, is absurd. He had the email addresses and, having had messages left for him, the numbers of the officers investigating. On that matter, again, I submit, the defendant is not telling the truth.
Violent threats and harassment. And harassment, is of course, a theme through this, but I hope it is easiest to incorporate harassment with the various aspects complained of. The issue of violent threats and harassment largely overlaps with the death threats. There were no violent threats, we submit, and the exchanges between the parties were in the context of a spat that does not as DS Locktone's unchallenged evidence establishes, cross the threshold of harassment.
An analysis of the tweets complained of,

assists: "You're on the list too now", volume 1, tab 8, 210. This was a comment directed at Katharina Ludwig, whose tweet the first complainant was quote tweeting and commenting on. It was not directed at the defendant. It did not tag the defendant, reply to him or refer to him. The first claimant gave evidence that this referred to a "Shit list", that is a list of people whom he thought poorly of for their pile onto Deanna Havas. This was an inherently more plausible explanation for what was, essentially, a Twitter spat without any words of violence. "What they don't know but will", with Kalfu symbol and the "BLOOD" tweet: these again, did not tag the defendant, reply to the defendant or refer to the defendant. The defendant explained that the claimant explained that the symbol was the guardian of the crossroads. He knew of Haitian symbolism, having lectured there and studied the matter. He gave a detailed explanation of his knowledge of the symbol and likened its relevance to that of karma in the context of the accusations being made against him. The

defendant's alternative explanation was to research Twitter - sorry, research Wikipedia and he claimed that there was a satanic connotation with a footnote. I took him to it, there was none. The claimant explained that the "BLOOD" tweet was one of nine tweets contained on an account he had created that listed the nine gates in Haitian vodou. He again gave a detailed explanation of the context of re-tweeting the blood gate, which was a warning against impure actions. Those tweets were to the world at large, not to any particular person. They represented the defendants online, obscure, perhaps ruminations. They were not threats. "Watch your steps", "They probably think I'm joking", volume 1, tab 8, 165. These tweets again, did not tag the defendant, reply to the defendant or refer to the defendant. The claimant explained they were warnings to stop or their would-be consequences. The consequences would be litigation and for us, suffering the verbosity of these proceedings, I suggest.
The re-tweet of @evolutionistXX, ",

"Believe in something. Even if it means sacrificing everything". That was with a picture of Charles Manson and Elliot Rodger. These tweets did not tag the defendant, reply to the defendant or refer to the defendant at all. The first claimant gave a cogent explanation of these tweets, supported by the use of the Nike Swoosh and the account given by the creator of those tweets.
And my Lady will recall the exchange with the defendant over his manipulation of the Manson image. Initially, I took him to the cropped image. He maintained that the image he had provided that I had taken him to was consistent with how the original tweet would have appeared on Twitter.
I then took him to the original image. The contrast is clear, bundle 2, tab 40, page 912 versus bundle 3, tab 51, page 1835, the Nike Swoosh is absent. The deliberate absence obscures the context. The court will recall the page of a blog where the image is discussed, specifically warning against readers that anyone who asks someone to sacrifice everything is to cooperate in

relation to corporate conglomerates, likens them to psychopaths and appeals to acolytes. It is that context that was deliberately removed.
The defendant plainly sought to manipulate by cropping the image. He did so again by claiming that he had not, and he was, I put to him, and I illustrated, caught out.
Contrasting these two images illustrates that fact. There were no threats of violence made. That claim does not follow on any objective reading. The first claimant's tweets proposing a duel and a fight, were not threats on a literal reading. And on a more obvious reading, those participating in viewing the spat amounted to criticism for the defendant as a bully and a coward. Only one of those messages tagged the defendant, the one that invited the defendant to partake in a physical duel. The others simply commented on his silence.
And pausing there, my Lady, in 1614, the Star Chamber, an English court at the time, issued a decree prohibiting duelling and it is reasoned by legal historians that by

outlawing duelling, defamation claims came to be decided in courtrooms rather than on battle grounds. It appears as though this case is a literal example of that development, some four centuries later. Whatever the case, the duel tweet, plainly, was an offer or invitation that required consent and thus was not a threat of violence.
Antisemitism and harassment. They overlap also, I suggest. Put simply, the suggestion that either of the claimants perpetuated antisemitic abuse or harassment is established on the documents, firstly and compellingly in oral evidence. Mr Miller gave a compelling and at times, emotive account of his faith and also helpfully, the origins of antisemitism. His evidence contrasted with that of the defendant, not just, I submit, in its impression of honesty, but its academic substance. His explanation of the origins of antisemitism will, we submit, have been of interest and assistance to the court. It also adds weight to the veracity of his testimony. At volume 5, tab 147, page 3943 there is an exchange between

the defendant and Katie Anderson. They are discussing the Kalfu symbol. The defendant accepted in his evidence that at the time he did not know what it meant. Despite that, he immediately speculated, "I think it's like an anti (((verified))) symbol", in other words, it is antisemitic. No basis for that. There was no basis for that remark, aside from the defendant's paranoia that he is the subject of antisemitic attacks from all quarters. It also an illustration of his propensity, my Lady, to make libelous comments without checking facts. And this goes to the public interest offence. The allegations of antisemitism and an antisemitic campaign are undermined by the ease and regularity by which he makes those allegations. And I will summarise. Daniel Keller. Daniel Keller asks this, "On what platform the defendant claims to have been targeted by accelerationists and in what way". The response from the defendant, from the questioning of his abuse, mutterings into, "Making excuses for the antisemitism of others is not absolutely harmless" Mr Keller then reveals that he is Jewish. The

defendant finishes the exchange with Mr Keller with, "Shame on you." It is labelled as -- "with shame on you," and it is labelled as enabling antisemitism and a space is created on the defendant's website that labels him an antisemite. The defendant then goes on to ask the Athens Biennale to de-platform Mr Keller and when they do not, they are accused of enabling antisemitic abuse and fascism, bundle 5, tab 164, page 4342. The defendant then goes to the British Council who also refuse to acquiesce to his demands and he labels them as "endorsing it," of course "it" being antisemitic abuse.

So to summarise, Mr Keller is guilty of antisemitism, the Athens Biennale enables antisemitism, the British Council who decline the defendant's invitation to set out any position are thus endorsing antisemitism.

The trend does not stop there. It goes on; Benjamin H Bratton writes a satirical piece that pokes fun at the defendant. Bratton is antisemitic as is the Walker Arts Gallery who refuse to take his piece down, a lack of humour, it seems, a lack of a sense of

humour.

There is not one tweet, my Lady, not one tweet that references Judaism. You will be asked to extrapolate from associations and memes that have been shown to not have been associated with the far right in 2017 that the claimants are fascists and, just pausing there to explain that point, much was made of Pepe the frog or Groyper memes and of course the defendant's own material, which I referred him to, included a document from the anti-defamation league which said that the Groyper memes became or were created effectively in 2017 where we are concerned with 2018. I think it was Ms Power gave evidence about Groypers being used in various ways and in fact I took the defendant to one of his own documents which showed that to be the case. In my submission, I submit that that assists the court because again it shows the reliability of the claimants' evidence over that of the defendant.

So they are fascists because of those associations which were shown to be false and of course there are no -- we are not

assisted by any expert evidence to assist the court in terms of the claims that the defendant makes in terms of these correlations.

They are not, and very obviously they are not, fascists and fascists in any event are not exclusively antisemitic necessarily. The need for extrapolation and explanation illustrates the lack of simplicity, the lack of truth in the antisemitic allegations that are so very damaging but there is hypocrisy and there is another lie. Referencing Mr Turner's wealth is an antisemitic trope and on that basis Mr Miller is antisemitic. The same presumably would then be levelled --- the same accusation would be levelled at Mr Turner for the use of Goldman Sachs: Blue-Blood or speculating on how Ms Power is a home owner, comfortably middle class.

On the first issue the defendant lied. You will recall, my Lady, that when he suggested that Mr Miller did not possess the required Jewish heritage, and that was the suggestion, because he speculated that Mr Miller's mother was a Polish catholic, that was

effectively saying, "He's not a paid up Jew." That was the import of it. I asked him a question, "Did you know that she converted to Judaism," and his answer was a lie, plain and simple. He suggested he did not have the time or the inclination to research Mr Miller's parents. I then showed him the exchange within the bundles where he has gone so far as to finding out the school that Mr Miller's father attended and also the school his sister --- Mr Miller's sister attended.
Due diligence you were told as an explanation as the sands started to shift under Mr Turner's feet. He has lied. His obsession with the claimants did extend to their families.
There are two pieces of evidence that unquestionably establish the lack of any basis for antisemitism and they are these; one, the defendant adopting a Star of David on his profile image for Twitter. Mr Turner sought to suggest that he would not be aware of that either. The following day there were images saved to his website, that catalogue or

whatever he wants to call it.
On his own website, the Twitter account was put to him and let us pause there. That is an unusual behavioural trait. That is, in my submission, an illustration of someone very easily offended, that they would go to almost obsessive lengths to store information but he said that he would not know -- and I put these images to him and a Star of David is in the middle of the image along with Hebrew writing, and Mr Turner then, sand shifting further under his feet, sought to deflect from the evidence by trivialising that image.
The second piece of evidence, my Lady, was the most compelling; in my submission, I asked Mr Miller in evidence why he changed his image and I submit that his explanation was as compelling as it was moving. He steadied himself and he said this, "I was asking God for protection from this." I submit that as a lawyer we all have moments and all of us as human beings there are occasionally moments when the import of an event is plain and that was one. What is plain here is that not only is Mr Miller not an

antisemite, he was the victim here and he was damaged by a campaign against him by the defendant but also the misuse of the term, the easy accusation of antisemitism by the defendant similar to his absurd use of the word "misogyny," trivialises the word "antisemitic" in my submission. These are not matters which necessarily the court needs to rule upon but these are issues which have arisen in the case. Mr Miller is not antisemitic. There was no campaign and that being the case Ms Power could not have been complicit in it.
Then Hitlarian Disability Politics; the evidence of the defendant, in my submission, comes into sharper focus here. The claimants conceded that they had engaged in tweets that were unbecoming and unattractive; however, those tweets from the Twitter playground are of a completely different nature to labelling someone as advocating the killing of disabled people. That is what the defendant did by his own admission. He kept the tweet up for months. It is claimed by him that this was an error but

he did nothing. He accepted himself in answer to my Lady's enquiry that he did nothing to mitigate the damage of this most disgusting of claims.
The court will have the point that this is plainly defamatory; however, the behaviour of the defendant in his evidence and in his statement bears analysis. Nowhere does the defendant accept the harm that this would have caused; nowhere. Specifically he does not -- as he appears to be incapable of doing so, he does not apologise. Both of the claimants apologised for their intemperate tweets but not a hint of it from the defendant. Whether it is an inability to emphasise, a feeling of certainty or impunity, whatever it is, I suggest, it is another example of the unsatisfactory nature of the defendant's account and an ability to see beyond his own world view.
Towards the Hitlarian Disability Politics is similar, I submit, to the refusal to countenance that the defendant got it wrong by alleging that Ms Power had been sacked from her job for her transphobic views. He is

unable to critically assess even when the evidence that he is wrong is presented to him or admitted by him. It is that refusal along with the illustrated tardiness of his "research" that defeats any possible defence of public interest. An example is the defendant's reliance on the first claimant appearing as Julius Evola. The defendant did not attend the event in question which was an immersive performance and this, even the defendant in his own statement, does not suggest that the claimant adopted the politics of every person he performed in character; for example, Andrew Bratton. The performance script does not refer to Jewish people or antisemitic tropes.

There is a lack of academic rigour from the defendant. That is contrasted against the two claimants. When asked to give an example of a Jewish figure who was antisemitic he proffered an individual who was involved in a website called The Daily Stormer and he said this, "He was of Jewish background." Not Jewish but Jewish background; that was the height of it.

Cartoon frogs and Pepe the frog; while a number of cartoon frogs with antisemitic symbols and so on were put to the claimants, the incidents of cartoon frogs liked by Deanna Havas did not in fact carry this imagery; that is slick lawyering, but that is the case in terms of the Deanna Havas liked tweet. The suggestion that the cartoon frogs themselves were always and only used by the far right as I pointed out is undermined by the corroboration with the bundle that the memes have not been consumed by the far right in 2018 and had only been in existence since 2017. You never know; perhaps there is the opportunity for rehabilitation for Pepe just in the same way that "queer" was once a slur and is now proudly proclaimed by those who are homosexual.

As the second claimant said in her evidence, Pepe the frog has been used by prodemocracy protesters in Hong Kong. The defendant did not seek to rely on expert evidence or indeed any independent witness to support the extrapolation that the use of this image is inherently antisemitic. An

honest person, we submit, would not be able to hold this material on the totality of the evidence and the absence of any evidence before this court.

Groyper Twitter accounts; the first and the second claimants' adoption of Groyper Twitter accounts I have already summarised in terms of the images that I took the defendant to in cross-examination which corroborated their accounts of Twitter accounts being used in the guise of various philosophers or other intellectuals. A Hygral Groyper and a John Cussins Groyper account were evident from the bundle. While the interpretation of the Groyper might have shifted and hardened since that time, the honest person could not draw a conclusion of antisemitism at the time in that context.

Associations; associations with Jack Stokoe and other individuals, the first and the second claimants both explained their reasons for associating with Mr Stokoe and it was clear that neither adopted his views. An honest person could not, we submit, in any event form an opinion of antisemitism on that

basis. It is, we submit, illogical to do so. Could an honest person also form the opinion that either claimant was a Marxist or an antifascist on a similar basis? As was adduced in evidence the second claimant and the defendant were Facebook friends which proves the flaw inherent in the assertion.

The first claimant, Mr Miller, is an advocate of free speech and that is where this all starts. He is holding a placard saying, "The right to openly discuss ideas must be defended." That is what the association proves. He cannot illustrate that any more plainly than putting himself in harm's way to say, "Look, free speech," and Mr Turner on a number of occasions during his evidence referred to the low point in this trial, the low point would really be quoting Voltaire which I refuse to do.

Discussion of Kevin McDonald and Nathan Coffness; an honest person would not form, we submit, the opinion that "sophisticated" amounted to "endorsement." It would be possible to describe chemical weapons as sophisticated without being in favour of

them. The point is further belied by the context in which the description came up. The second claimant had described an event containing some very crude people, very crude antisemitic statements which prompted the discussion and my Lady will recall that once the cross-examination had finished, I re-examined and I took -- we went a couple of pages back and we could see the context and it is a theme which I agree with; we are ad idem, context is important and you could see the context of the discussion but it also illustrated that both the complainants are interested in discussing ideas and I suppose, in my submission, the crux of it is rigorous political analysis of ideas.
The description of the defendant as an invertebrate homunculus translated from the Latin means "spineless little man," echoing the insult of "spineless coward" which the claimant had made a few days previously. There was no connection between the first claimant's use of the phrase and the example is given in very different contexts by the defendant in the bundle. In addition, as the

court heard, the slur "spineless" had been made in plain English as in Latin. It is the context of not taking up an invitation to a duel that the comment was made.
Friends at Twitter; again this was without religious or ethnic connotation. There is no suggestion that Twitter is a Jewish company.
Transphobia; the defendant referred in his evidence to the tweet from a Lacanian perspective, their relation to the symbolic appears as literally psychotic. This tweet was not put to the first claimant. It was made in the context of a thread by a third party at the @dpoppallatus about transgender persons. While @dpoppallatus may have made comments that could be construed as transphobic, that did not apply to the first claimant. The first claimant's comment is not an expression of his own opinion but a reference to that of the psychoanalyst Lacan. The first claimant explained his rationale for engaging with the word "reductive" which was used and often offensive Twitter account in relation to Jack Stokoe. That cogent, we submit, explanation that he sought to engage

critically and draw them away from such a position is a ready interpretation of the situation here.
My Lady, I will finish before 11.30 and I am conscious of the break for the stenographer.
Ableism and homophobia; the use of the occasional casual insult such as "village idiot" and "cock sucker" were put to the first claimant; these were simply insults and there is no evidential basis for forming an opinion that translates into homophobia or ableism.
The counterclaim; that concerns publications on Twitter with some publications on Facebook, You Tube and in the case of the second claimant, her appearance -- her very appearance, her presence at a round table, the fact that the second claimant's appearance at a round table can possibly provide a basis for harassment is absurd. The short answer to the counterclaim is that it is unfounded, in my submission. The claimants refer to the facts set out in relation to the true defence. If the court finds that the defendant has sought to cause the claimants harm, as we submit it should, his allegations should not stand.

Even if, by reason to the defendant's particular characteristics, a finding of a course of conduct contrary to section 1(1) of the Protection from Harassment Act could be made, although we say it should not, and the claimants' rights to defend themselves and others to respond fell squarely within the exercise of their own Article 10 rights to freedom of expression and their Article 8 rights to their reputations.
The defendant has not pleaded a case of aiding and abetting pursuant to section 7(3)(a) of the Protection from Harassment Act 1997. His case appears to be founded on each claimant having committed a course of conduct. Even in their totality, we submit, the events are weak. When separated by each claimant they fall apart. Crucially they are within the context of consensual -- in my submission, it is a consensual dispute that the defendant willingly engaged in and perpetuated. I defer to our written submissions on this topic. In short, the matters relied upon simply cannot and do not add up to harassment meeting the threshold

of oppressive conduct. The defendant's deep and subjectively focused aggrievement does not transform the incidents into something they are not.
A principal difference between a party's respective cases is, we submit, that the claimants' case succeed upon the documentary evidence itself that they rely upon. In contrast, the defendant's case is at least in part dependent on either his accuracy and/or his honesty. As I have summarised in this address, there are clear examples of lies and a distortion of events by the defendant when he gave evidence. I should add two things; the deleted Twitter feed of the Gorsedd account of Ms Power, the purpose of the enquiries into the deletion of that feed were deliberate. There was an intention to exploit a series of tweets that Ms Power could not retrieve. The defendant had the tweets, he had saved them, and once that was revealed he sought to hide the feed and the court has been taken to the correspondence. That is manipulation. He has a propensity for it.

The second thing is that my first question to the defendant in cross-examination was whether having listened to Mr Miller's account, he thought he might actually have got it wrong and that Mr Miller might not be an antisemite. He could not countenance that possibility. He doubled down, he accused him of reducing fascist apologia. This whole episode began because the defendant described an art gallery as a nazi space, an art gallery that he had never been to. He was asked to read an article by the defendant on the matter, a scholarly article, and he did not. He doubled down and he claimed to be the victim.
My Lady, repeating Newton again, truth is ever to be found in simplicity and not in the multiplicity and confusion of things. The truth of the claimants' case is, we submit, evidence via the clarity that simplicity provides. The simplicity of the claimants' case sits in stark contrast to that of the defendant's whose case requires explanation, extrapolation and attention. The court should find for the claimants and against the

defendant and, in my submission, justice demands that that is the case. Those are my submissions.
MRS JUSTICE COLLINS RICE: I am most grateful, not least for the concision, thank you. There are a couple of issues I would be grateful for a bit more help with and for the benefit of those in the room, the exercise of my asking or drilling down a little bit or asking questions, nothing should be read into that, other than that I am seeking for greater clarity and precision about what your submissions are, not that I have formed any view of them, and to give you an opportunity to address me further on points of law rather than points of evidence. I have your submissions on the evidence very clearly indeed.
Now, the area I want to explore, as I sort of signalled at the very outset of this, is around serious harm to reputation and this is section 1 of the 2013 Defamation Act which has some claims of its own to be a model of conciseness. A statement is not defamatory unless its publication has caused or is likely

to cause serious harm to the reputation of the claimant. Now, there are a lot of words in that formulation which have been the subject of deep thought by the courts over the years as to exactly what all of that means.
Now, serious harm to reputation, so do I understand you correctly to acknowledge that the two torts we are dealing with in this trial, defamation and harassment, differ in relation to the harm that they focus on? So harassment is looking at -- well, we will come on in more detail to what it is looking at but it is a matter in which causing distress, anxiety, personal suffering, if I can put it in that way, is of the essence.
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: Defamation is different.
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: Defamation is focused on harm to reputation and I think I have used a formula myself. I make no claims to originality in saying that the harm of reputation is the damage caused in the minds of publishees. You are nodding

so I am emboldened to progress on the basis that you are not quarrelling with that or you do not want to say anything more about it.
MR WALKER: No, I am very grateful for the steer and I am reflecting ----
MRS JUSTICE COLLINS RICE: Well, you may want to come back on all of this. I am not putting you on the spot, I am just trying to drill down to whether there is any legal dispute here or not because that makes a difference to how I approach the ----
MR WALKER: Between the two torts?
MRS JUSTICE COLLINS RICE: Well, whether there is any legal difference between the parties on how defamation law works. So I have to look at reputation. I cannot very easily summon up in my mind from the evidence -- and you may wish to take the opportunity to reflect yourself and point me to it, whether I have any particular evidence of the claimants' reputation. It may be you say that that is fine, there is none and I do not need any because your case is put on the basis of the propensity of the allegations made to damage reputation, so that be your

answer and, if it is, it would be helpful for me to understand it.
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: But, as I understand it, I have not been taken to evidence of the -- of what sort of reputation ----
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: -- that the claimants have. Like I say, that may not be relevant and that may be your answer.
MR WALKER: I am grateful.
MRS JUSTICE COLLINS RICE: But clarification would help. In this space, I have heard very clearly that the claimants do not own -- do not concede, accept or own the labels of fascism ----
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: -- or neo-Nazism or ----
MR WALKER: Yes.
MRS JUSTICE COLLINS RICE: They choose not to sue on them, that is a matter for them.
MR WALKER: It is not a matter for the

court to determine.
MRS JUSTICE COLLINS RICE: That is correct but their evidence -- your submissions are that they do not own those labels.
MR WALKER: And, in my submission, that was explicitly stated in oral evidence by both the first and second claimants.
MRS JUSTICE COLLINS RICE: I remember that evidence and I heard it. A lot of other labels have been bandied about in the course of this trial and it may be that the claimants or neither of them own any of those either and I explored a little bit - a very little bit - with some of them the areas of interest and it is perfectly possible to have areas of interest without owning or subscribing to the matters in which an interest is taken and again [11:30:36] they may not be relevant but I am going to have to find ways of expressing in my judgment the sort of area of discourse we are in and words like -- labels like "Alt-Right" have been used, accelerationist, neo-reactionary and again, as I said to Mr Turner, nobody's world

view is on trial.
MR WALKER: No.
MRS JUSTICE COLLINS RICE: But I am just gently exploring whether there are any labels of that sort that I can use in a way that does not mischaracterise how the claimants themselves would understand their area of interest.
MR WALKER: In my submission, I can assist on that point. Again, in oral evidence, and having looked at the transcripts, both of the claimants gave answers to the descriptors that were levelled to them. As part of my oral submissions, which I have just made, I have characterised the first claimant as an advocate of free speech.
MRS JUSTICE COLLINS RICE: I have that on board.
MR WALKER: And I know the court will have this - the evidence of his placard, the right to openly discuss ideas - must be defended. The second claimant gave evidence that she is an academic and she gave evidence concerning she found Mr Stokoe interesting but his views abhorrent

and she was interested in how he presented in person in contrast to his online presence, and my recollection is that the evidence was that he was the only person that they had ever been able to meet who they were able to discuss these views with. In my submission, the court can be sure about the descriptors of death threats and antisemitism. It need not trouble itself with addressing other facts which have arisen that have been a feature in the case. In my submission, although the defendant seeks to draw a correlation between these things, the thrust of our submission is the fact that you have to extrapolate or draw a correlation illustrates the tenuous nature of the association given the answers that the court has to determine and the evidence that the claimants gave in oral evidence, but I will reflect and see if I can assist with a bit more clarity.
MRS JUSTICE COLLINS RICE: I am grateful. As I say, just to be very clear, I am not looking for labels to attach to the claimants.
MR WALKER: Yes.

MRS JUSTICE COLLINS RICE: I am looking for labels to attach to the discourse and areas of interest that they have given me evidence of. For example, I said to the second claimant she was an art critic, she was a philosopher, she was a feminist and I said to the first claimant that he was interested in - I think I offered a list and he very fairly said to me that that was not a complete or entirely accurate list and I invited him to give me a descriptor. So, I do not think any of this goes to my determination but it does go to how I express matters.
MR WALKER: Yes, and the structure of the judgment, as I understand it.
MRS JUSTICE COLLINS RICE: That is it, thank you. Now, I do have a rather more dry legal question.
MR WALKER: My learned junior is listening, all ears.
MRS JUSTICE COLLINS RICE: She is on the starting blocks. I want to explore a matter which snagged my attention in your written closing submissions at paragraph 9.4 where you say, and it is a point that you dealt

with very briefly in your closing submissions, oral submissions, and it is to do with section 1 - we are back in section 1 of the Defamation Act. You say, "It does not require proof that each individual publication caused serious harm and in cases of publication to the world at large online it may not be possible to do so", and you cite the decision of the Court of Appeal in Banks v Cadwalladr for that proposition. Now, I have not heard that proposition and I have been back to the judgment and you are quoting from paragraph 49 of the judgment. If you read the paragraphs in the run-up to paragraph 49, my understanding of what the Court of Appeal is saying there is that where you have the publication of, or a publication to a large number of "publishees", what section 1(1) does not require you to do is to look at each individual act of publication to each individual publishee of that item. You look at the evidence more generally for serious harm caused and if it crosses a certain threshold then the law by no means requires investigation into or speculation about what

each and every reader of The Times newspaper, for example, reading that item, might have thought.
Now, my understanding is that that is the extent of that observation in that paragraph. I am not aware of any other source in the authorities and I am aware of a number of authorities to the contrary which enable you simply to take all of the imputations and publications sued on, put them in a bag and make inferences about the cumulative impact and indeed, on the contrary, Sube, Amersi, certainly the High Court has taken, I think, a consistent view that it is necessary to establish that each imputation caused serious harm. Now, I set that out because that is my understanding. Now, if you want to argue that my understanding is wrong and that it does not mean what I think it means and that there are authorities supporting the more generalised, I am going to need to be taken to them.
MR WALKER: Of course. Thank you for identifying those areas. We will reflect. I am conscious, also, having spoken to your

stenographer, that 11.30 is sort of the cut-off and it would be helpful if we could have a break.
MRS JUSTICE COLLINS RICE: Of course. I am not putting you on the spot. I just want you to understand.
MR WALKER: In terms of fairness to my learned friend who is next up, would the court like us to address you on those issues after a break or for my learned friend to make her submissions and we reflect?
MRS JUSTICE COLLINS RICE: Well, I just put you on notice.
MR WALKER: Also, I do not want in any way to queer my learned friend's pitch in terms of her submissions.
MS EVANS: I do not want to get procedurally strict, but in trials you do not get a right of reply.
MRS JUSTICE COLLINS RICE: No.
MS EVANS: So, I would object to that.
MRS JUSTICE COLLINS RICE: Then in which case if we rise for, let us say, 10 minutes, that will give you a chance just to turn it over in your mind and either to - well,

you have heard the question.
MR WALKER: Yes. I am very grateful.
MRS JUSTICE COLLINS RICE: I will leave you to it. So, 10 minutes.
(11.40)
(A short adjournment)
(11.55)
MRS JUSTICE COLLINS RICE: Yes?
MR WALKER: May it please my Lady, my learned junior, Ms Grossman will address the court.
MRS JUSTICE COLLINS RICE: Yes, thank you.
MS GROSSMAN: My lady, I fear I rather may have set a hare running. We have attempted to make our closing submissions brief and simply to draw the court's attention to the relevant paragraphs but did not develop it at length. To be absolutely clear, we are not talking about the cumulative impact of each of the different tweets complained of.
MRS JUSTICE COLLINS RICE: Right.
MS GROSSMAN: That would be contrary to the law as we understand it and we do not

seek, through this case, to change those long-established legal principles. There is a wider point on serious harm and the case I will direct the court back to really needs no introduction in this room, which is Lachaux v Independent Print.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: As you will see, in our skeleton argument and in our written closings we set out the propositions at paragraph 21 of that judgment.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: The case does not fail for want of evidence from publishees but serious harm may be based on a combination of what is called the seriousness of the allegations, the situation of the claimant, the circumstances of the publication and the inherent probabilities. Now, I take the point, as made by your Ladyship in Lee v Brown, which concerned a number of highly repetitious allegations and in that case what your Ladyship said was that a case based on inference nonetheless has to have an evidential basis.

MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: That is known and understood and we do not seek to detract from or diminish that proposition. There are a few points of facts I will weave in before I go back to some of the law, but before I do, I emphasise the fact that the authorities have said on a number of occasions that what is not needed to succeed is either a witness in the box saying, "I read specifically this and I thought the worst of them".
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: Or any sort of - to adopt leading counsel's expression - hypothesis that could operate between the strict laws of cause and effect in terms of physics on this point, and the courts well recognise the difficulties that claimants experience, for obvious reasons, in these circumstances. I am going to emphasise the inherent probabilities, or what we call the Lachaux factors very quickly and then I am going to talk very, very quickly about the evidence. And I do apologise. We thought we had dealt with this in our written closing and

alluded to this morning. I am grateful for the opportunity to develop it further.
The first point is the seriousness of the allegations and the point made in Hourani v Thompson is the more serious the allegations, the more likely that the nature of those allegations may in and of itself give rise to that finding. That is 10 March 2017 judgment, which is in the authorities bundle at paragraph 125.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: In this case we do not need to repeat what those allegations are. We say that those allegations are inherently extremely serious.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: Indeed, abhorrent. The next factor that we go to - and I will take them slightly out of the order in the skeleton argument - is the circumstances of the publication.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: And we look at publications that are made to the world at large on an account that has some 12,000

followers.
MRS JUSTICE COLLINS RICE: Now, 12,000 followers. I have that figure very much in my mind. There is some rumination, I think, in the authorities as to what may be or may not be read into the -
MS GROSSMAN: The numbering?
MRS JUSTICE COLLINS RICE: The "followership", if I put it that way. There is not a direct correlation between that and reading the tweets, but all of these things are very fact sensitive and I have that on board and I have -
MS GROSSMAN: If I may draw on that point, and then I will go to some of the other points -
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: 12,000 followers: there are books and magazines which have lower circulation than 12,000 followers.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: And indeed in many cases that are heard in this list, although fewer now than in years gone, one would be hearing cases involving publications perhaps

in journals, in perhaps newspapers such as the FT, and very often in those cases, one might be hearing a case about an article of a massive investigative piece splashed across the front page that goes to some five pages internally, or the word complained of might be a tiny little comment tucked away at the bottom of an article perhaps in a bit of a dry section of the newspaper - someone cynical might say, "the back of the business pages is not what attracts most readers' attention".
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: There is no way in any of these cases whether we are talking about those cases or a Twitter case, to identify what someone was actually reading and paying attention to.
MRS JUSTICE COLLINS RICE: No, no. It is probabilities.
MS GROSSMAN: Just as in the same way that a newspaper circulation might give an indication as to harm but we cannot actually extrapolate whether in fact people skipped that article to go to the crossword on the back page or not. And in making this assessment I

would encourage your Ladyship to bear that in mind.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: I would then - and this is why I wish to take these factors out of order - go to the situation of the claimant and within this I would raise the situation of the defendant. I refer back to the submissions made by leading counsel as well as to the evidence your Ladyship has heard as to the positions that these individuals hold within the particular world.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: And I submit that this has some relevance in looking at that figure of 12,000 people. In short, this is not an anonymous account with 12,000 followers widely known for posting very silly memes and information of absolutely no consequence that people might find themselves following but essentially skipping past. This is the account of a renowned artist who has undertaken a very high profile project with important connections and that is another factor that your Ladyship can take

into account. And so it is not just that figure of 12,000. It is who within that figure of 12,000 might be reading and taking account, but particularly given the fact that the claimants operate within that world as well, who within that figure would be reading and taking account not just from the fact that it comes from the defendant but it refers to people operating within that world itself. And these factors together, we say, go to - these are evidential bases which go to that position of the inherent probabilities, as is put in the case of Lachaux.
Moving on from that a bit - I am sorry. I am in the beginning stages of a cold.
MRS JUSTICE COLLINS RICE: Poor thing.
MS GROSSMAN: I am seeking to hydrate my throat a little. And so we say that is our starting point and again although it was actually in terms of very different publication to the world at large, and we say the Hourani judgment is quite interesting on this point where there is specific evidence in terms of one individual who has seen the publication

and is said to think worse of the claimant. But what Warby J effectively says in that judgment is whilst that consolidates the view, he would have been quite happy to take that view on the basis of simply those inherent probabilities. And we emphasise in this context as well the fact that either claimant might hold a controversial position within that world does not prevent there being further reputational damage that may be exacerbated upon them. This is, in fact, essentially part of the Banks v Cadwalladr point. It is also a point that comes up in Monroe v Hopkins where one of the arguments made was that essentially Katie Hopkins, who was known to be on the right wing, had followers - that the people she posted to were never going to think well of a left-wing activist in the guise of Jack Monro, and the point that was roundly objected there and then returned to in Banks v Cadwalladr, is essentially there is almost always, absent very specific cases on very unique facts, a reputation left to be lost.
MRS JUSTICE COLLINS RICE: Yes.

MS GROSSMAN: Now, moving on to what we say the evidence is, the claimants gave evidence and some of the matters that were raised, and I think it was that the first claimant talked of the second claimant having been shunned and avoided by virtue of mere association with him and he also raised the incident of Adam Lehrer - Adam Lehrer has not given evidence but there is a statement from him contained in the bundle. We have given a reference for that - where Adam Lehrer then becomes shunned and avoided by his association with Mr Miller. We then see other incidents of evidence. For example, you will recall the first claimant's evidence as to jobs that she had lost. There is, in the witness statements - the reference in our written closing is wrong; it is, I think, paragraph 152 of Mr Miller's statement - a reference to the publisher of the book about Andrew Breton not wishing to publish until this trial was over. And then we see admittedly, and we do not put this in any other way, with for example the Penguin letter which repeated certain allegations of a

similar ilk to in this case, that the second claimant's evidence, I believe in her witness statement, was that her agent dropped her after that.
Now, we accept that this is a general picture of evidence of being shunned and avoided and of one's reputation diminishing in the eyes of third parties. We do not pretend it is anything other than that, but what we say is that this is a picture which supports that case based on the inherent probabilities and this is a general evidential picture that can go to it. Within its limitations, and we say its limitations are not ones that the authorities contradict; in fact the authorities' support on these propositions is consistent in that it shows the difficulties that the claimants have had in their reputations over this period of time.
In the court's accepting those two propositions, firstly that the case can be founded on those four Lachaux factors, as I say, and secondly the point which is very much emphasised in Tierly[?] about recognising the difficulties of calling

witnesses, we emphasise this, that whilst the court has to find serious harm in respect of each publication complained of and the allegations sued upon, that what it is not required to do is draw a clear line between each of those publications and evidence as in evidence going beyond those four Lachaux factors of specific harm. The court is entitled to say, and find on the four Lachaux factors, we say, on each statement individually. I use the word "statement" at this point to distinguish from the point about publication to individual publishees.
MRS JUSTICE COLLINS RICE: Yes.
MS GROSSMAN: And the court is entitled to say - and when I say "entitled to say", it may, of course, come to one decision or the other - but the court, we say, can on the basis of what is before it find that for each of the statements we complain of. The court can then look to that wider evidence and assess that that wider evidence is consistent with what those factors are, it underscores what those factors are. It is not evidence to the contrary of what those factors are and whilst

no line can be drawn between any of those matters that have been raised in evidence, and we say that those matters have been raised in evidence both in statements and in the witness-box, that is entirely of a piece with what has happened and this is very different, we say, from a situation - and I do return to Lee v Brown, and the reason why I return to Lee v Brown is because there is a comparison in one sense with the fact that the allegations in that case were highly repetitious - but the difference in Lee v Brown was (a) that the publications were made on each occasion to highly selective and small groups of individuals and (b) in certain cases there was positive evidence to the contrary of what the claimant was suggesting and when we say "positive evidence to the contrary", evidence that people did not think the worst of him on allegations that had been published but also evidence showing that some of the suppositions he made, for example around the rugby club, could be attributable to other factors and when I say "other factors" I mean

factors outside the ambit of reputational harm, for example what had happened from covid[?]. And we emphasise in that case the difference and those fundamental differences in this case.
Now, part of the difficulty here is that the defendant has published these allegations on a highly repetitious basis over some time and a further difficulty is that as a consequence of the way the litigation has run we are now a number of years after that and therefore what people have is an evidential basis that is not as close to the original facts. But essentially what we say on that is this, that the defendant should not be afforded a windfall for having made these publications on multiple occasions. The defendant, and this is going to the crunch, and again I take us back to Hourani, albeit on different facts, and we go back to this point: what the defendant is straining with every nerve and sinew to do is to cause damage to their reputations and he makes these allegations, we say, because these are inherently damaging allegations. If they were not, he could have simply said it

was disgusting that people were platforming Mr Miller because of a Twitter spat and what I would say is that if there had been simply one publication by the defendant, and there are many cases heard in this court where liability is found on a single tweet - Monroe v Hopkins being a classic example, and in that case as well in the judgment it was difficult for the claimant to recall the exact harm that she had experienced. If there had been a single tweet of Mr Power and a single tweet of Ms Miller - I am sorry, I have confused their pronouns: Ms Power and Mr Miller - each saying that they had respectively made death threats, pursued antisemitic harassment against him and that had been published to 12,000 people, we say that for all of the reasons we have already said, the court would have little difficulty in accepting that that had caused serious harm and the fact that this is to a certain extent repetitious and we cannot say, "and that harm has been even greater" and we are precluded from saying that that harm has been even greater on a cumulative factor but we are in

the position that we are in - it is not a windfall that should be afforded to the defendant.
The other point I emphasise and this did not perhaps come out in evidence as much, but these are allegations with the exception of Hitlerian disability politics, that remain live; the webpage is live and so far as I am aware, although I will no doubt be corrected if I am wrong, every other tweet continues to be published - sorry, every other tweet except the Hitlerian disability politics continues to be published. These are not stale or dead allegations; they are not retracted allegations, which are sometimes the subject of a litigation before this court. They are not apologised for allegations before this court. Now, in that alternative hypothesis we talk about - we might consider - and this has happened - I am sure your Ladyship has seen these cases as well as I - where there is this sort of argument where the defendant has long stepped away from what is said, one might raise a real question as to whether the Lachaux factors combine the evidence of the

type I have suggested really point to that position, but the language of section 1 uses "caused or is likely to cause" and these are allegations are of the utmost seriousness which simply cannot stand; that there is harm to our clients from the fact that they continue to be there. This is not something that - this is not one of those cases, albeit that the facts we are talking about are long ago - where this is staying. The very nature of what reputational harm is, not just as a defamatory tendency but in terms of the ongoing harm that individuals suffer, the very nature of that harm under "serious harm" is ultimately that this sticks; that people consider that there is no smoke without fire and it leaves what is called a nasty smell. This is partly why the court awards damages in the way that it does, to effectively clear that away. One example your Ladyship will note is that in the web page for Deanna Havas what the defendant did was dredge up tweets that she had published years before, and that is in the bundle. I can take you to the index reference

to that page if necessary. This is a point I make about ongoing publication. In the days of newspapers turning into chip shop paper, that might be a more difficult questions, but whilst these are not - except for a pin tweet about these proceedings - top of the defendant's threat, these are matters which by the nature of the medium have a potential for percolation and a potential for harm alongside the harm that has already been caused. I do not know if I can assist your Ladyship any further on that.
MRS JUSTICE COLLINS RICE: You have assisted me greatly. Thank you very much.
MS EVANS: It was slightly an abrupt ending. I was not expecting it. May I just sort out my space for a second? (After a pause) My Lady, I am conscious that we have given you an overwhelming amount of pieces of paper at the start and at the end, but hopefully they will assist you after you rise because I think you will reserve your judgment.
MRS JUSICE COLLINS RICE: I will indeed.

MS EVANS: And as you said at the beginning, hopefully they will also allow me to go relatively efficiently through the submissions. Excuse me for my voice as well, which is there is obviously a bug -
MRS JUSTICE COLLINS RICE: It is going about ---
MS EVANS: -- in the court room. Can I just explain this first of all, before I start properly? Various annexes that you have got attached to our submissions are, apart from the major chronology which is just intended to be helpful as an overview for the documents and the narrative, they demonstrate that the key facts in the case are doing various different jobs at the same time, and therefore that those facts needs to be looked at from several different angles or lenses. So, that is why you have an annex that sets out what we say the facts are that are the bedrock for the opinions in Annex C, and why there is an Annex D which sets out what we call the waves of the harassment by way of focus on the key facts that we suggest your Ladyship needs to take into account in

relation to harassment, that is the tort; also the truth of harassment in the libel defence, but also in fact, Annex D, in relation to qualified privilege/reply to attack as I will explain when I go through my submissions. So that is just by way of explanation. It is not that we are seeking to just generate unnecessary -
MRS JUSTICE COLLINS RICE: No. I follow the structure.
MS EVANS: Just by way of quick opening remarks about the case, the claimants have insisted throughout the proceedings and during the trial, and indeed in my learned friend's closing submissions earlier on, that the case is a spat. As your Ladyship knows that is very much now how the defendant sees it, and it is now how the defendant would wish the world out there to see it. The fundamental issue in the case is about trivialisation, we suggest, of something very serious, antisemitism in particular. It is also about bullying and it is also about the manifestation of both the bullying and, in my client's view, antisemitic

bullying/harassment in the modern medium that this trial has been focused on - Twitter, and social media generally. Very importantly, the case is about someone who has taken a stand. He has taken a stand because of what he believes in, which is both freedom of expression in the art world, but equally ensuring that the limits on freedom of expression, which of course exists, are kept an eye on when it comes to serious transgressions such as antisemitism. So, it is the opposite of something which is funny or satire as far as the defendant is concerned, and we suggest that objectively speaking that must be right. The main consequence of this matter or this affair for my client has been not on-line so much in fact in the end, but off-line and the effect on him personally of having to endure this harassment and this abuse for up to five years. Those consequences, as I think it was clear from his evidence, and indeed his father's have had a very lasting effect and are sincere in the way that he described - have been sincerely described. The last general point to make by

way of observation is a contrast with how antisemitism has been described during the course of the evidence and the materials in this case, which is that it could be sophisticated or not. We suggest that there is nothing sophisticated or requiring a sophisticated or accrued analysis in antisemitism; it is a simple thing to grasp, and on that basis reinforces the seriousness of the issues at the heart of this case.
We have made some submissions in our closing about the quality of the evidence that you have seen and the characteristics of the parties and credibility and so forth, and I do not need to repeat any of that. Your Ladyship is aware that we invite you to reject the claimants' evidence on certain very key aspects of the case as being untrue or as being simply implausible. The defendant, on the other hand, we suggest, gave an honest and true account and we would obviously invite your Ladyship to accept his evidence in full.
I just want to deal very briefly with serious harm, if I may. It is obviously for the

claimant to establish that the test is met. We have set out at some length in our closing submissions why we say they have fallen well short of that. I do not propose to go through all that. I think your Ladyship has what we say very much at the forefront of your thinking on it. I would just make a few points just by way of summary in response if I may.
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: As I say, as far as the defendant is concerned, despite the additional assistance that you received from Ms Grossman just now, they have fallen well short of what is required for section 1(1). It is extraordinary really that the claimants' answer to the paucity of evidence on this threshold issue which your Ladyship has twice now mentioned, that their answer is simply to say: we rely on this general position. I think it was described by Ms Grossman just now as a general picture. That is precisely why their case should fail because, as your Ladyship has identified, when you are not talking about a mass media

publication, post section 1 and the analysis in Lachaux in the Supreme Court, among other more recent analyses in the authorities, it is not enough to just say it was a serious allegation; there were readers of it out there and we feel that these consequences that we experience must have been something to do with what was said. It does not provide sufficient proper structured causation for the court to work with to do it that way. As we have pointed out in our skeleton at length, what we have here is we have a series of complaints about publications which either this defendant did not make or about allegations which are not sued on. Those necessarily fail section 1 because the causation -- It is not even that it is broken. It is just that there is no causation set up. That is even before one gets to looking at whether it has been pleaded or not, and as we have set out again at length in our submission what is now relied on is not pleaded in so far as there are any specifics. Penguin is one example and Adam Lehrer keeps coming up, but those are not causes of action pleaded against the

defendant, whether as actual causes of action publications or republications. So although the claimants may have a sense that they have been shunned and avoided by people, they have to show that (a) that was caused by any of the 16 tweets in this action or the content warning, and (b) the harm that they suffered as a consequence if they show (a) was serious. For all the reasons that we have given in our written submission, they have not done it. It is simply not good enough to say: it is not fair because the defendant gets a windfall if we have to identify specific causative connections, but they do and that is what section 1 has done. It has raised the bar. This case is not a mass media case. In relation to the extent of publication, in fact for completeness I should mention, because it has not been mentioned this morning, that that figure of 12,000 followers is not the figure that is relevant if the court wants to get to grips with the extent of publication. We used the data that was available from Twitter analytics which is set out in our opening skeleton argument. There is a table there.

We deployed the methodology that Warby J (as he was) in Monroe recommended for working out the number of engagements and publishes per tweet and we set them out in that table. First of all, we have done it per tweet, because obviously that is what the law says. That is each publication and within each publication there are several imputations as well. But even if you just take the imputations sued on, antisemitic harassment campaign for example, they have to show that each of those tweets that X, really rather small to very modest, numbers if you look at our table (nothing like 12,000) had a causative effect on particular publishees that shows in serious harm to reputation. Now, it is true that the authorities have always been clear that a claimant who cannot call a witness to say: I read the words and I thought the less of you is not marked down for that because it does not reflect the real world to expect that you should necessarily find such a publishee. But the world has changed now because that was law that came from the pre-internet age. This is

why, along with section 1, the authorities are now much more subtle about how you measure whether serious harm has actually happened. It may well be that you are expected to find some evidence that shows - it does not have to be a person; it could be documentary - that shows there has been serious harm as a specific result of that particular tweet. So, we say that the inherent probabilities in this case per 16 tweets, looking at each one in isolation, per content warning, the inherent probability is that they were not caused serious harm, and the fact that they have not been able to produce evidence to show that they have, is indicative of that, and it is not surprising. One of the key factors which we have got in our list of many in our submissions on this is that the law of diminishing returns is particularly significant when it comes to trying to work out if there is any serious harm flowing from a tweet, by which I mean that it is accepted, and again it is common sense but it is also reflected in the authorities, it is accepted that obviously tweets move further down the

thread as more tweets come in at the top. So fewer and fewer people read a tweet in the period after its immediate emergence when it is at the top. So, on that basis, it is a particularly powerful argument in this case to say that it is inherently improbable that either claimant was caused, or both claimants were caused serious harm in respect of each tweet because as times goes on the number of potential publishees diminishes, but also, of course, in this case you have a common theme of the allegation across the 16 tweets. They virtually all carry the allegation of harassment. They do not all make the allegation of antisemitism. I think five out of the 16 do. But it is also therefore relevant to take account of the fact that as is understood with Twitter and the fact that it exists by having followers, many of the followers who read the tweet when it first appears in tweet 1, or tweet 2, will also see it when it comes later to the same or similar effect at tweet, 5, 6, 7. But the longer on it is until they see it again, the less impact. There is a reference in Chamberlain J's judgment in Wrigth v

McCormack where that point is picked up. So it is a combination of the raised bar that section 1 represents; the fact that social media needs special handling when it comes to the causation, which your Ladyship is very familiar with; and the fact that in this case there is not any evidence which is either pleaded - which either supports the pleading in relation to serious harm or is not evidence which has been given off the cuff in the case about Penguin and Adam Lehrer and so forth, none of which is pleaded and none of which the defendant, therefore, has pleaded a case in response to, but in any event, however, we suggest is an example of the claimants scrabbling around trying to meet the problem that they face on serious harm. Having said I was going to do that briefly, unless you want me to address any other points -

MRS JUSTICE COLLINS RICE: No. Thank you. I have read your closing submissions and I have your analysis there. Thank you.

MS EVANS: Thank you. Then I am going

to turn now to look at what I might call the key factual features of the case which underpin each of respectively the truth defence, the facts underlying the opinion defence, the reply to attack and the harassment tort. As I said, and I think this has been made clear all the way through and it is obvious, those facts are doing all those jobs at once. So, the first of the features is what I would describe as the relentless nature of the attacks from the claimants which persisted over 15 waves or phases, as we have called them in Annex D, between late July 2018 to September 2019. So, in other words persistence. This was a continuing and sustained attack by each of them for a year. As Nicklin J said in the Suttle case which is in the authorities bundles, and this is analogous, it is particularly pernicious a form of harassment where the victim feels constantly under siege and powerless to stop it. So, that is the particular relevance of persistence, and in this regard the defendant gave evidence in writing and orally about how disorientating he found having those

waves of attacks. The second feature is that the claimants were both aware from the outset, in other words from 30 July 2018, that the defendant was very concerned about antisemitism and the threats that he had already experienced prior, and was alive to and nervous about generally. So, we say both claimants, right from the start, had actual knowledge of the defendant's specific position. That, of course, is also relevant to reasonableness in relation to the harassment tort defence. I will go through some of what is in Annex D to flesh out these points when I have highlighted these five features. For example, just on that point, Mr Turner made clear, in his early communications in July with Ms Havas, who you will remember was one of the early protagonists featured, he made clear to her the threats that he had faced to his security, and he told her - this is a tweet at bundle 2, tab 41, 1041 - I do not think anyone needs to turn it up - he said "It's a bit harder when you have to have security because you have violent neo-Nazi groups posing credible threats to your safety

on a daily basis across several countries." Of course, the claimants knew this because they were a follower of Ms Havas from heir own account, and they saw - and I do not think this was disputed in evidence, in fact it was prayed in aid - they saw the exchanges between the defendant and Ms Havas, and they reacted to the defendant, they say, partly because of that. So, they were aware, the claimants, we say of knowledge of the defendant's concerns about antisemitic attacks online and offline, and that awareness on the claimants' part, of course, logically and actually, as the evidence made clear, that awareness got stronger and stronger as the harassment went on because the claimant - the defendant kept coming back in his tweet saying: this is what I have experienced and I find this antisemitic because my security - and so forth. So, there was a snowball in process, which you often get in Twitter harassment situations. Again, that is the point made by Nicklin J in the Suttle case. It is waves of attack which increase not just in terms of the effect on the "victim" but in

terms of the snowballing process of gathering up the knowledge that the defendant is deemed to have for the purposes of the objective test, which I will come on to. The third feature is the repeatedly antisemitic nature of the targeting of the defendant, as any honest person and as the defendant perceived it to be. That started really on 27 October with the dog whistle references and some swastikas before that, to the defendant's alleged inherited wealth, but that inherited wealth trope is the one that picked up traction from October onwards, and it was expanded on by the second claimant. I should just make clear that it is established in the authorities, and this is in the Trimmingham judgment of Tugendhat J. It is established that mocking or targeting at an individual by reference to a protected characteristic, such as race or religion, can amount to harassment. In this case there are lots of features of the harassment beyond the antisemitic quality, as it is perceived to be. By itself it can be enough, and in any event it certainly can be a highly aggravating factor.

The fourth feature is the systematic - the term is "gaslighting" which is now used on a daily basis as if it is - I am still not quite sure what it means, but I think we are all using it in this case in the same way. It is making the victim - making the person question themselves, question their judgment; it is belittling what they say is their experience. That is how I am using it. I think it is how the defendant broadly - he will tell me if I am wrong - would intend it to be used. So systematic gaslighting of the defendant by the claimants. Much of the content directed by them at him was, we suggest, a systematic attempt to undermine him by questioning his mental state or his sanity. For example, each of the claimants repeatedly called him "paranoid schizophrenic", "paranoid", "pathological liar", "hoist by his own retard" and so forth. Not only was this cruel and gratuitous, but it was ignorant because it was in respect of matters which they had no first-hand knowledge of or had turned a blind eye to anyway in relation to available information. Two examples: the reason for

the cancellation of Mr Turner's attendance at the Robert Grunenberg gallery in Berlin in February 2019, and the second example, the circumstances of the antisemitic and alt right attacks the year before on his art work "he will not divide us" and in particular the theft of the flag and the arson in Tennessee by two neo-Nazis - as to which there is plenty of available online media coverage had the claimants wished to look at it. Gaslighting is a particular pernicious kind of harassment, particularly in this context where the defendant was also accused of fabricating allegations of antisemitism.

The fifth feature is that the claimants have repeatedly accused the defendant of being responsible for sending letters and communications accusing them, without any credible evidence to support the allegations. They have persisted in making those allegations against him throughout the trial in cross-examination and still this morning in the closing submissions on their behalf. That by itself - that question probably just about comes within "gaslighting" as a definition,

but that questioning and accusation of knowing falsehoods is a further indication of the oppressive and unacceptable nature of their conduct, to use the statutory language. So, those are the five features which we say are borne out of the evidence and they all, when you come to make findings and reach conclusions, we suggest, allow you, and we would obviously say point you towards ruling that the truth defence on harassment is made out; the facts are sufficient for the opinion; there is a reply to attack that is made out; and the counterclaim is made out. I will develop that more in summary. I just want to next look at some of the key legal principles if I may before coming back to the facts a bit more. First, the concept of targeting, which is obviously a term that is used in the harassment authorities, but interestingly it is not in the statute itself as a term, but it is also relevant to, again as I said, both establishing the truth of the libel defence, because by definition it is going to involve harassment targeting at somebody, and it is also, as I will explain, relevant to

reply to attack/qualified privilege. The key elements of the tort, and I am reading from your Ladyship's description in the LCG authority, is that it is a persistent and deliberate course of unreasonable and oppressive conduct targeted at another person, which is calculated to and does cause that person, alarm, fear or distress and, as you made clear, it must cross the border from the regrettable or the unfortunate to be objectionable. It must be serious enough to sustain criminal liability and I do not think anybody in this case is questioning any of the principles there.

One thing just to stress, which I know your Ladyship is very aware of, it does not mean of course that it has to be a criminal offence.

MRS JUSTICE COLLINS RICE: No.

MS EVANS: The subject of a criminal prosecution is not a bar.

MRS JUSTICE COLLINS RICE: No.

MS EVANS: Otherwise you would not have any civil liability, so I just get that out of the way but, as I said, the term "targeting" is not used and actually the only definition or the

only assistance in the statute on this point is in section 7(3) and you might want to look at that.

MRS JUSTICE COLLINS RICE: Yes.

MS EVANS: I think it is in the -- if you have got it loose, I do not know, but it is certainly in the fourth authorities' bundle.

MRS JUSTICE COLLINS RICE: I have got it on the bench.

MS EVANS: For others, it is tab 60, page -- I do not know what the page is, page 11.

MRS JUSTICE COLLINS RICE: It does not use the word "target." That word comes out of the authorities but it does use "in relation to."

MS EVANS: Yes, that is all I was going to say.

MRS JUSTICE COLLINS RICE: Yes.

MS EVANS: That is the term. I mean, the "targeting" obviously comes from Hayes v Willougby in the Supreme Court.

MRS JUSTICE COLLINS RICE: Yes.

MS EVANS: But that was a case where they were not -- where they were trying to work out whether it meant "targeting" or

something else and I think strictly speaking it is obiter in that case but I am not quibbling with the term. I am just trying to get to grips with how expansive it is for cases where, particularly Twitter cases, where by definition you can have a tweet that is directed at somebody but lots of other people read it and they read what is being said about you and that is the relevance of the concept of it being a course of conduct in relation to the person. So ----

MRS JUSTICE COLLINS RICE: Sorry, just pausing there, is your submission that "in relation to" maybe satisfied by -- in a case of harassment by speech, it may be satisfied by -- or it may be established by looking at "content" rather than "publishee"? Is that ----

MS EVANS: No, I am not saying that it can be or should be established only by content. I am not resiling from the conduct part at all ----

MRS JUSTICE COLLINS RICE: Yes.

MS EVANS: -- I am just trying to -- I am going to show you a couple of authorities ---

MRS JUSTICE COLLINS RICE: Okay.
MS EVANS: -- because they approach it slightly differently from the word "targeting" so perhaps we should look at those now. If you take up the Trimingham judgment which is in -- I think it is in bundle 1 of the authorities at tab 16, which was the judgment of Tugendhat J and I know you are familiar with it, following the harassment and privacy trial where the claimant lost and it is paragraph 272.
Of course Trimingham was a case about articles in the Mail, so it is a newspaper case ----
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: But if you go to paragraph 272, as I say, Tugendhat J, who of course was the judge in charge of the lists for many years, and had great experience of media cases, he said -- sorry, does your Ladyship have that paragraph?
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: He said, "Whether or not it would be right to say that the defendant has targeted Ms Trimingham, I find that the

words complained of are 'in relation to her' (PHA s.7(3)). I also find that because each occasion on which the words complained of have been repeated is an occasion related to a newsworthy event relating to Mr Huhne," and he talks about some particular facts.
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: So you see the statutory wording coming in directly there and then the other case is Nicklin J's case of Suttle, which I have already mentioned in that context, which is I think in bundle 2 tab 25, and I will just explain what this -- so this was a case which was about Facebook posts -- has your ladyship read it before?
MRS JUSTICE COLLINS RICE: I think I have.
MS EVANS: So, the posts were put up by the defendant about the claimant and her alleged cruelty to animals, including visual images and so forth. So, they were partly images directed at her in the sense that they were intended to be horrible about her - no doubt they may have been intended for her to be seen - but for her to see them, but

intention does not really matter in that sense. But at 46(c), which is admittedly - because this was a libel under harassment claim - in the libel section that is describing the posts, he says - he makes clear there that the postings consisted of a still image of the claimant taken from a recording so that the claimant's image featured prominently on the page, not only when the postings targeted at her were read.
So, it is a sort of another general point about the postings or the harassing content sitting there available about somebody and at 57 it is a similar point. This is in relation to remedies to harassment. He says at 57(a) "The campaign was clearly and deliberately targeted by the defendant at the claimant via Facebook". So, it is an example of a case where there is directing, if that is what is the closest definition of targeting, is directing - directing messages at the claimant but also as in the Trimingham example, stressing that the content is in relation to the claimant and that that is therefore a relevant constituent element of the harassment per section 7(3).

MRS JUSTICE COLLINS RICE: Is the target you have to hit that the constituent acts of the defendant must each be, let us call it in relation to, the complainant and/or that the course of conduct must be in relation to -
MS EVANS: Yes, and those are the words of section 7(3). I was going to come on to this but I will deal with this now. I am not sure it is in dispute that the number of incidences and the nexus between them of the claimant's firing tweets - I am not sure it is disputed that that would equate to a course of conduct, more than twice, in other words. I understand that "you causing alarm" part of it is disputed as is the objective test, if ever it would have been known or understood by the claimants that that was the effect, but the course of conduct in this case, which is a long one - let us just call it a year in respect of the claimants - has a cumulative effect on the victim, the defendant as well as an effect per individual tweet that comes up, comes across and relates to him.
MRS JUSTICE COLLINS RICE: Yes, where, as I have recently been discussing, the

tort is constituted by the totality of the accumulation of a course of conduct. That is what harassment is and its quality, the quality of that course of conduct, must reach a high threshold, but the tort does not necessarily require any effect from any individual constituent act.
MS EVANS: Yes. I think also the other important point about the context here and it being online is that where internet users are hiding behind anonymity to let us say encourage others to gang up or join in, and that being a particular pernicious form of harassment, that sense of it being targeted - the course of conduct being targeted is all the greater. So it is the piling on characteristic. So, targeting or in relation to whichever is the better term encompasses something quite broad potentially. I am not setting up this submission in order to then try to avoid saying that the tweets in this case which are complained about by Mr Turner were targeted at him, because that is his case and that is what it is doing. His job is to show the level of targeting of individual tweets, but

with respect I think your Lordship is right to - if not to distinguish but to identify that there is a subtlety here in the wording of the statute. It is the course of conduct that needs to be in relation to. There is one other authority I was Just going to refer you to which is the Pallister one at tab 18.
MRS JUSTICE COLLINS RICE: Still in volume 2?
MS EVANS: That is a good question.
MRS JUSTICE COLLINS RICE: Volume 1.
MS EVANS: 1. It is tab 18. This was a decision of HHJ Maloney. He was an eminent libel silk before he went on the Bench and was again very experienced in this field. He was dealing with a form of harassment which consisted of a variety of different media, articles, posters, emails and so forth by the defendant about the claimant. So, if you go forward to paragraph 23, he is applying the law to the facts of that case. He starts with "The conduct must occur on at least two occasions..." Then in 24 he again uses the terms again "conduct targeted at the claimant". This judgment is now relatively

old, 2015. He says, "... for this purpose is not a reference to the subjective motivation of the defendant but it is a reference to the nature of the conduct..." - your Lady ship's point. "Such conduct might be general. One might pick up a placard which would not be directed at any one person but here we have words that are quite expressly and overtly identificatory and critical of MR Ware. So there is no doubt that in that objective sense they were targeted at him," which I would say is another example of "targeted" and "in relation to" being interchangeable. I see the time.
MRS JUSTICE COLLINS RICE: Yes. How much longer do you think you will need?
MS EVANS: I will be no more than an hour, possibly less.
MRS JUSTICE COLLINS RICE: Very good. We will rise and resume at 2.00.
(13.00)
(The short adjournment)
(14.05)
MS EVANS: My Lady, (inaudible) ... I am going through some legal principles.

MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: I found the first one, which is this (inaudible).
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: I am going to move on to the first and last three principles -
MRS JUSTICE COLLINS RICE: Well, I just wondered - it was put against you earlier, still in section 7 of the Protection from Harassment Act - that you had not pleaded Section 3A, which is the extended definition of acts of the defendant. I do not know if there is anything you want to say about that. I am not suggesting that you need to say anything about it, but --
MS EVANS: I was not aware that that was a point being taken against us.
MRS JUSTICE COLLINS RICE: I think it was just mentioned this morning that you had not pleaded aiding and abetting, which is the extended definition of 3A --
MS EVANS: Well, the case against each claimant is in respect of each claimant's own conduct.
MRS JUSTICE COLLINS RICE:

Understood.
MS EVANS: So, primary liability on behalf of each of them. There is not some conspiracy alleged, that is not part of the plea. The aiding and abetting is not necessary in order to say their conduct included encouraging others to pile on. Actually, it is pleaded because the counterclaim that refers back to the particulars of harassment in the truth defence, which makes clear that the claminats were operating, if you like, with a group, not in a formal, structured sense, but just, for example, if you take Ms Havas, they were followers of hers, they were at the same point in the narrative in the chronology. Mr Miller, in particular and Ms Havas were engaging with the defendant, seeing what each other were doing, responding. I mean, Mr Miller's main case seems to be, "I felt I needed to defend Ms Havas." So, there is an intermingling of the characters in the story, in that sense, which is what happens with Twitter, because everybody gets involved, but there is not a formal case or aiding and

abetting, that is why it is not pleaded.
MRS JUSTICE COLLINS RICE: That clarifies it.
MS EVANS: That is the long way round of saying, no, I think.
MRS JUSTICE COLLINS RICE: Thank you.
MS EVANS: The second principle, I just wanted to alight on briefly and actually I have touched on it already. Is just the need for a nexus between the acts of conduct, making up the course of conduct. The reason for showing a nexus to show persistence, which is a requirement - anyway, it would help to show persistence. Also, to show how similar the acts are in character, something that would be looked at to see if it was a course of conduct. Therefore, how closely linked in time they are, another indicator of a course of conduct. These are all indicators. And in this case, needless to say, our submission is that that is clearly satisfied, the nexus is there to be seen from the chronology. Annex D in particular is designed to help see it. I do not think it has

been argued against it, in the sense, I do not think it is said that there is not a thread running through the tweets which the defendant complains about and which indeed then, in the end, results in the tweets that the claimant complained about. So, that is the second principle.
The third one, the third point of law, is just about how one should approach the objective test in section 11B, in the Protection from Harassment Act. In other words, how do you assess whether an alleged perpetrator of the harassment ought to have known if his conduct involved harassment of the other. It is also relevant, of course, to the reasonableness defence, which is relied on, section 1(3). The correct approach appears to be from the authorities and again, I know your Ladyship is very familiar with it, that you do it by reference to whether a reasonable person in possession of the same information would think that this conduct involved harassment. That is most easily seen in the Hayden authority. "When considering whether the defendant ought to

have known the conduct amounted to harassment of the subject or target, the court should take into account the characteristics of the subject and the target, which are known to the defendant/harasser". One sees that, again, it may be useful just to see it, in the Trimingham authority, which is bundle 1 of the authorities, tab 16 and it is paragraph 89. I have sort of touched on it already, I think, because I think before the adjournment I mentioned the point about protective characteristics.
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: 89, starts under a heading, "A complainant's characteristics" and says, "The PHA makes criminal a course of conduct by a writer who "knows or ought to know" that his course of conduct is "causing [a] person distress". It is not in dispute that, in considering whether journalists", or I would say, anybody else, "ought to know their articles", or their tweets, "amount to harassment of a person referred to", which is another example of the judge not using targeting there, "the court is entitled to, and

should, consider the characteristics of that person which are known to the journalist", or the harasser.
So, although it is an objective test, obviously, it does matter, very much for the court to take on board the evidence as to what the alleged harasser knew or ought to have known. In this case, we say there is a lot of evidence as to what they knew, in other words, actioned knowledge, but if they don't, actual knowledge, the constructive knowledge test is what we have to meet.
And we say, we also meet that very straightforwardly.
And then I think the last point to make about this objective test - issue, not point - is that the characteristics of the parties, i.e., the harasser and harassed, maybe relevant, also, when determining whether the course of conduct in question meets the necessary threshold of oppressive conduct. These sound quite commonsensical. In other words, you may have a defendant with very broad shoulders, such as a very senior businessman in the community, who is

always being written about in the newspapers and always being criticised for what his company sells as opposed to somebody who is not so high profile and has their own position. And we say that in this case, Mr Turner's position, as somebody who had experienced and was known to have experienced severe antisemitic attacks on his artwork and on himself, through 2017 and into 2018, is someone with characteristics that are relevant to considering what the harassing claimants knew or ought to have known. And I will look at that a bit more specifically when I go through some of the tweets.
Just on an authority on that, there is a case called King v Medical Services International from 2012, which I suspect is bundle 1. Yes, bundle 1, tab 12 - It is 11 and it is a judgment of John Leighton Williams QC, sitting as a High Court judge - slightly strange format, you see his name right at the end of it.
Paragraph 201 - it is a harassment claim, obviously - there is a discussion about the law that goes on for some pages and at 201 -

this is the bit that I wanted to just draw your attention to, the last line, "Knowledge of an individual's vulnerability is relevant and someone who knows of an individual's vulnerability needs to take that vulnerability into account when considering his conduct. He cannot shelter behind the argument that most people would not be alarmed or distressed if he knows or ought to know that the targeted individual's vulnerability could result in him or her suffering alarm or distress", and that is in the context of looking at the statutory requirements in section 1.
Similarly, just whilst on this point, we submit that the target, in this case, Mr Turner, the target's impression or interpretation of the message, communication, which is sent to him or targeted at him is highly immaterial in itself. In other words, in this case, for example, Mr Turner's opinion that some of the tweets that were being targeted at him by the claimants were antisemitic, that is material to the test, because it affects how he reacts and whether he is caused alarm. So, for example, being sent an image of a man

tied to a stake creates the impression in Mr Turner's mind, created the impression in Mr Turner's mind, that it was a threat, a threat to kill based on his life experience and his current situation of having been sent many antisemitic messages by many people. So, his impression of it, the effect it has on him is inextricably related to the question of whether it causes alarm. And so, in our submission, that is an element of this question of how you assess the conduct on a constructive knowledge basis of the defendant and how you assess whether it is reasonable for the person - whether it would be reasonable for a person in possession of the same information, which would include information about Mr Turner's anxieties about antisemitism, to react in that way. And to understand, on the claimant's part, to understand that this was harassing to do this.
So, all the death threat examples fall into that category as do the tweets which from late October, started by Mr Miller repeat the trope about inherited wealth, which Mr Turner was very clear in his evidence, he

regarded as antisemitic. That affected how he reacted to the harassment. So, that is the third principle --
MRS JUSTICE COLLINS RICE: So, just understanding your submissions exactly, you do not dispute that this is a fully objective test?
MS EVANS: No.
MRS JUSTICE COLLINS RICE: So, how an individual claimant might feel about something is not the test. However, you say, relying on the authorities you have shown me, the objective test is to be applied in all the circumstances, including those known or which ought to have been known, that is the objective test. I am just reflecting this back to you so I make sure I understand what it is you are saying, because we are in a slightly subtle ground between the subjective and the objective here, are we not?
MS EVANS: Yes.
MRS JUSTICE COLLINS RICE: So, applying that in the present case, you say it is not inconsistent with applying the objective test, that I should consider what the

respondents to the harassment action knew or ought to have known about the context into which they were directing their course of conduct. Is that roughly it?
MS EVANS: And how Mr Turner would have reacted to it, which is obviously, part of the test.
MRS JUSTICE COLLINS RICE: I think I follow that.
MS EVANS: Because I mean, obviously, the statutory test is that the harasser, so the claimants in this case, knew or would have known that this was a course of conduct amounting to - involving harassment. And the definition of the harassment in the Act is causing alarm or distress. That is all I mean by it. (inaudible)
MRS JUSTICE COLLINS RICE: Yes, I think I follow. Thank you.
MS EVANS: So, there is a subjective element, but it is obviously, not the overriding... And one particular, specific assistance perhaps might be gained from something we mentioned in, I can't remember if it is our opening or our closing

skeleton argument, at paragraph 68, which is in relation to threats to kill and the criminal law --
MRS JUSTICE COLLINS RICE: I noted that point.
MS EVANS: And it may be of some assistance just from the point of view of policy.
MRS JUSTICE COLLINS RICE: Yes.
MS EVANS: We are obviously, not dealing with criminal law here.
MRS JUSTICE COLLINS RICE: I thought that was a point going to the truth of the death threats. I thought that was a point relevant to the libel action rather than the harassment one, but perhaps it is relevant to both.
MS EVANS: Strictly speaking, it is, but it also relevant - what I am suggesting is that perhaps it is - maybe it is not helpful. I am wondering if it is helpful in getting to grips with what one might think is a slightly subjective element that we are talking about, because what the Offences Against the Persons Act, section 16, expects, sets as a

threshold for a threat to kill is a reaction by the victim and an understanding by the victim that he thinks that this is a threat to kill. So, in other words, he thinks he is going to be - he might be killed. Whether he is or not, does not matter as opposed to the intention of the perpetrator, which is not relevant. Maybe I am making it more confusing.
MRS JUSTICE COLLINS RICE: I will think about it.
MS EVANS: It just seems to be a point that on the edge might be useful, but maybe it is not needed. The fourth principle I just wanted to touch on is the question of whether the truth or falsity of the information in the content that has been used to harass is relevant. The answer is that it is not irrelevant, depending on all the circumstances again, but it is not going to be determinative.
MRS JUSTICE COLLINS RICE: A person may be harassed by the relentless repetition of the truth about them.
MS EVANS: Yes, yes, I see.

MRS JUSTICE COLLINS RICE: That is what the authorities say.
MS EVANS: And obviously, you are very well aware of the authorities that have looked at it. The reason I mention it is that, in this case, we suggest that where allegations are shown to be false in a trial, there is a public interest in preventing the publication or imposing remedies after the event, not for the protection of reputation, it is not (inaudible) to defamation. It is just about whether the fact that false allegations are being targeted increases the element of oppression or unpleasantness, and it may, it may not. In this case, we say that there is evidence and that we say that the evidence is clear, that some of the allegations that were being made by the claimants, such as the inherited wealth allegation or allegations broadly put, but its context, sometimes clearly specific, that Mr Turner was making things up and inventing problems with antisemitism, one obvious examples being in relation to the Athens Biennale or indeed Malouf or indeed the Benjamin Bratton article. If those allegations

about him were false, which we say has been shown in this trial, then that goes to the oppression. Now, perhaps one feels it an aggravating factor because we say we are over the threshold, even, you know, without that, without looking at truth or falsity, but it is a feature that has loomed quite large in the case, accusations against Mr Turner of not telling the truth, including in harassing tweets. So, that is the fourth.
The last point of principle I just want to touch on is going to seem a bit mad, so, I am going to switch over to the qualified privilege, reply to attack, but that is just because it is still relevant, the principle behind that defence to the overall factual nexus of harassment. And I say that for this reason. So, the principle, as you know for qualifying privileged reply to attack as a defence to an actional libel, is that a person may publish a defamatory statement to defend themselves effectively, so if they have been attacked by a claimant or actually also by a third party potentially, then they are allowed to reply in kind and defame in

return. The only measure of whether what they do is permissible is whether it is reasonable, proportionate and relevant as a reaction to the attack that came in to them. So the reason I have mentioned it at this point - I am not going to say anything else about the law on reply to attack - is because there is an obvious sense in which there has -- there is some overlap there with the reasonableness feature of the harassment tort. So another point to make about it is that a reply to an attack is a defence that can apply to multiple online publications and one of the authorities in the bundle, Manegee - I do not need to take it up, I think - deals with that, that was one where the period was over 18 months. The responses in that case were considered to be reasonable and proportionate waged against the defendant who kept saying the same -- kept saying the same things, sending the attacks back, waves like in this case, so I suppose the short point is that the fact that a libel defendant publishes the defamatory statement to reply to an attack on his own character is likely to

be a relevant factor in considering whether the attacker was harassed -- sorry, was harassing the libelled defendant without good reason or acting unreasonably, it is not a necessary factor at all but it may be a relevant factor.
It may be that in this case it is just part of the context but, in my submission, the fact that the law has found a place to protect defamatory speech in the context of someone replying to an attack on them has some force by way of analogy with somebody who is being harassed and has to fight back. It may be that it is easier to see that now when I go through some of the examples but I will move on unless you have any other points on the law you want me to deal with.
MRS JUSTICE COLLINS RICE: I am ----
MS EVANS: I am going to come on to honest opinion and all the other bits ---
MRS JUSTICE COLLINS RICE: Yes, yes, I just want to be clear what your position is on the threshold test of gravity because both defamation and harassment are capable of abridging free speech and the issue we have

looked at in section 1 of the Defamation Act expresses the public policy in saying, "Yes, but it has got to be causative of serous harm otherwise it is not proportionate for the law to wade in."
Now, the threshold of "gravity" is something in defamation that has been - whatever the word is - imported, extrapolated, but at senior court levels, that the law should not wade in and abridge free speech unless the harassing speech crosses the threshold of gravity and there are dicta about it to say where it is speech alone, that is a seriously high test. I have heard what you have said about oppression and persistence but gravity sits over and above that, so I am keen to understand -- I have read and will read again all of your written submissions but it is an invitation to you to articulate exactly how you put the case on gravity.
MS EVANS: Well, I think the short point is that of course we accept that speech is part of the course of conduct -- part of what is complained about is what is said in the tweets that went out to Mr Turner by the

claimants but this is not a defamation case. The tort is directed at preventing conduct which is harassing. That is not an answer by itself because obviously, as the cases indicate, though they are mostly newspaper cases, you can have conduct through a series of articles in a newspaper in theory and I accept that in that situation the authorities are clear that the bar is high for a harassment claimant because of free speech concerns. But I do not accept that the bar is as high in cases which are not involving media articles, journalists and where it involves individuals where you see the context is tormenting or persisting in running a line of attack over a period of months designed to intimidate, threaten (on our case) or accuse.
The quality of the conduct is measured in the effect it has on the claimant in this case, Mr Turner, to the extent that -- not because it is a subjective test but to the extent that it is relevant because, as we were discussing before, you have to be able to assess whether alarm or distress has occurred and it is not the speech itself which is causing that

consequence, it is the persistence, the over and over again which is the conduct.
Now, the content of the words is obviously relevant because one of the things that causes distress and hurt feelings is what is being said but there is no authority that says that, for example, harassment must meet a serious harm type level of -- or equivalent of gravity ---
MRS JUSTICE COLLINS RICE: At a level which would sustain criminal liability.
MS EVANS: Yes, but bearing in mind the importance of -- bearing in mind it is accepted that speech can be harassment, the only way that you can find the line is on a case by case basis and in this case we say that the factors we have set out showing the course of conduct and the effect are sufficient -- well sufficient to take it over the line of gravity, even though we are talking about conduct that includes speech. The Suttle case that I took you to before Nicklin J is an interesting example because that was about speech, that was about a defendant who took a video of the claimant and thought -- or saw

a video of the claimant beating a dog without doing any checks. He put the video up and created a Facebook page and put it on an animal cruelty Facebook page and you can imagine the consequences. He made lots of allegations on the page about the cruelty of this woman, how appalling she was, and all the rest of it and everyone really piled in.
In that case, the judge's view was that it could not be much more serious for that claimant who almost lost her job, who was -- who suffered terrible anxiety and distress as a result of it. She did sue for defamation as well but in the context of the harassment, there was no question that it was over the threshold because the conduct, the targeting was so vicious and so unjustified, unreasonable, to use the statutory term, so in some ways that is not a very helpful answer because it is like saying, "You know it if you see it," and it is going to be your job to decide if you see it.
We would urge you to see it for what it is and that this submission throughout this case that the claimants have been stopped from

exercising their free speech has never been made good in the sense that they have never pointed to anything that they were saying or writing or any article or work that they were planning to adduce which Mr Turner stopped them from doing. Their free speech was to be able to say antisemitic things to him according to his perception of it and to accuse him of lying and to accuse him of bullying people because of his inherited wealth. It is not a -- if one wants to get into the balance, theirs was not a serious free speech in the hierarchy -- just slagging somebody off without doing research about whether they are right or not, that is not high in the hierarchy unlike what Mr Turner was trying to do which was to call out something that he regarded as deeply serious and important and was attacked for it. So that is the long answer, my Lady.

MRS JUSTICE COLLINS RICE: Thank you.

MS EVANS: I am just going to take you briefly, if I may, through a few of the incidents in annex D just to show you how

we say the inter-relationship worked between the defendant's tweets, which are sued on, and the claimants' tweets which he is suing on. It is annex D. I am going to start with tweet 1 but before I do, instead of asking you to read it, the background of course is that -- the chronological background, and I know you are very familiar with it, is that it begins on 27 July when Mr Miller reacts with a barrage of tweets to Mr Turner's tweet about the LD50 gallery being Alt-Right and from 27 July -- and even Mr Miller admitted that those tweets, which were deleted subsequently, were what I think we called memes.

Then you have the person, Deanna Havas, getting involved and if you look at page 3 of annex D, by way of contextualising what follows, paragraph 9 -- I do not know if you have had a chance to look at this document but the way that it is structured -- okay, yes, so this is in what we call the second wave of the harassment and paragraph 9 describes some of the tweets from Ms Havas, after she got involved -- so, for example, this is after

Mr Turner started researching her, after she got involved, and what he found out about what she says on her own thread and she had said things like "when a journalist has written an article explaining that she should not need to worry about being murdered by a neo-Nazi," Ms Havas responded, "In a just world you would." Some of her other online posts included liking a tweet stating that national socialism is good, describing an individual as a globalist Jew with a new world order designed agenda (?) and using the Alt-Right echo symbol to indicate a Jew and so forth. That is all context because what then, as you know, evolved was a very intense period of targeting by Mr Miller of the defendants in late July through to August including the escalating attacks, the glove sequence on 1 August and then various ones on 4 and 5 August saying that he had cold black eyes and no soul, all ones which Mr Turner gave evidence led him to fear for his safety but also to regard them as antisemitic.

So that is the background and then there was a bit more toing and froing on the tweets

from Mr Miller in August and if you go forward to page 8 -- so tweet 1, I am going to do this according to the -- tweet 1 is, in other words, the first tweet complained of as libelous so paragraph 18 -- I am just going to pick it up at key points rather than read it all out. After weeks of being the subject of abuse, and so forth, by the claimants and then the Athens Biennale situation, where they had accused Mr Turner of employing the epitome of online hate speech, Mr Turner then responds with his first tweet which you see set out there.

To put it into context, that first tweet was his response to things being said by third parties immediately prior to that which had targeted him. Immediately after that, as we know from the evidence, in paragraph 19 you get the man on the state tweet coming from Ms Power in the DC Groyper account. Then you also get paragraph 20 a week later, 27 October Mr Miller starts for the first time introducing the antisemitic trope of inherited textile wealth.

If you go over the page you get to tweet 2

which was posted on 20 or 21 November by Mr Turner and you will see from the context given here that tweet 2 was a reply by Mr Turner to an attack by Ms Power and others. This is the one in paragraph 24 where Ms Power had responded to Mr Turner saying, "You are a liar, no one has threatened you, you are suffering from serious paranoia and guilt induced by your inherited wealth." Incidentally, tweet 2 was one of three that was taken down and is no longer up. There is tweet 2, tweet 6 and tweet 14 which are not any longer -- I think it was suggested that it was only tweet 6. Then you start to see a pattern and in paragraph 26 Ms Power then comes back responding to Mr Turner, echoing Mr Miller's language about pathological liar and so forth. You go on and you get on 22 December the third tweet and again you see that it is a reply by Mr Turner to a third party, this time it is in relation to the Benjamin Bratton situation, and the previous tweets by the claimants, especially by Mr Miller, and then in 29 you see Ms Power again comes in and accuses of Mr

Turner of playing the victim. It is interesting because one of the patterns that you see when you break it down forensically like this is that after virtually every tweet that Mr Turner posted, which is sued on, Ms Power comes back straight away afterwards repeating her insults and her accusations to him, even though he does not at that point know who she is or say anything or has not said anything about her.
You go forward and the next one is -- there is 3 and 4 in mid-February, that is page 14, tweets 4 to 7 and again you can see from what is set out above that Mr Turner's tweets on that day were a reply to a barrage in the preceding period earlier in February. Then you have the Maloof situation and you come on at page 15 to tweets 8 to 11, which are on 10 and 13 March, which are a response to attacks in the day or so before by both claimants and others. This is one of the examples of a publication which has been cited in the trial, the anti-reaction research group publication which seems from time to time to be relied on as some sort of

supporting pillar for the serious harm case but of course it is not complained about in this action and Mr Turner's evidence is that he did not send it anyway, so perhaps that is why it is not complained about.
If we go forward to tweet 12, which is 23 March or 19 March, I think, and you see again in the context the reply indirectly at least to Ms Power and others endorsing messages from RealTruthLamp, Mr Keller, attacking Mr Turner and again in paragraph 42, Ms Power then comes back with multiple tweets on 23 March responding to Mr Turner. Then coming towards the end at page 18, tweet 13 is a clear response to an attack by Ms Power in relation to the Prague Microfestival issue and then tweet 14 is 3 May, a reply by Mr Turner to attacks by both claimants in relation to Prague Microfestival publicity. Then on page 19, we have tweet 15 of 20 May, which was the defendant's response to Ms Power appearing with Mr Maloof at the even in Berlin where she did not say anything about the sculpture which was widely regarded as antisemitic and that

was his response to that. Then, finally, on page 20, tweet 16, later in August, on 18 August, this defendant publishing in response to continuing attacks by Ms Power and Mr Keller through the RealTruthLamp.
So that is a whistlestop tour designed to show the patterns. It is designed to show why it is that I say that the primary material showing the tweets has a job in all the defences but also clearly in respect of the harassment tort. When you go through the phases of harassment, as I know you will, carefully and methodically you do see clearly, we suggest, the constituent elements of the harassment tort and the reply to attack - privilege in fact - as well as the examples of the death threats as Mr Turner perceived them and that is as you have seen, the targeting of the defendant by each claimant over a persistent and long term period, so it is a course of conduct. You actually see actual knowledge by both claimants of the effect on the defendant from the start and that this gained greater and greater -- they gained greater and greater knowledge as the months went on because

obviously he kept saying, "This is why you can't say this, this is the truth about various intervening matters," Athens Biennale, Benjamin Bratton and so forth, and we suggest that it also, therefore, demonstrates very clearly that at the very least they ought to have appreciated that he found it unwelcome. We suggest that the evidence is strong enough to say that they knew that he found it unwelcome and that it was causing him distress and upset, including in respect of the antisemitism because he said it. So overall, we suggest that it is the court's -- that it is a very clear case of a relentless and oppressive, inexcusable, unreasonable and damaging campaign against Mr Turner.

One brief point about the police investigation is that, in my submission, it is only relevant -- and the relevance of DS Lockstone's evidence -- the evidence of DS Lockstone's only relevance is to show that there was a police investigation at a point in time, strangely during virtually the whole period of the case until not long before trial. I think it was not accepted by the claimants that there

even had been a police investigation just because neither of them had been contacted or interviewed and that is why it became an issue as to whether there was a police investigation.

Plainly, the fact that the police did not regard the material at that stage as sufficient for a prosecution does not have any impact on the question of liability in this case since the test is completely different as we said at the beginning but I just have one correction which I was told I needed to correct, because I missed it from this morning's opening, I think my learned friend, Mr Walker, said that the defendant had not reported the death threats to the police; well, he did and you get that from bundle 1, tab 39, page 783 just for the record.

I am going to move on very briefly just on another couple of points about the defences, if I may, to honest opinion. As I have been saying as I have been going along and, as you know anyway from our documents, we rely on the same particulars of truth which are pleaded in respect of the truth defence to

support -- as the primary support for the honest opinion of antisemitism. Your Ladyship is very familiar with the law in relation to section 3(4)(a) which is the objective honesty test. It is a very generous test for a defendant, deliberately so in order to protect freedom of expression and your Ladyship has already ruled on the status of the statement, antisemitism and the other epithets as being opinion, so we are only concerned with this factual support. There are two key points about it. The facts that existed at the time of publication that are relied on do not need to have been known by the person expressing the opinion. It is one of the bulwarks of the defence. The facts do need to have been -- any of the facts that are found to be relevant to support need to have been true and loosely at least relevant and connected to the reasonably (inaudible) expressed. In this case, we say that the court ought to have no difficulty in finding that connection. Mr Turner's comments about antisemitism were invariably -- and, as I say, there were only five tweets out of 16 where

he actually uses that term. They were invariably comments, as your Ladyship's ruling found in terms of the second condition, the basis of opinion, they were comments on material or facts that he was directing the reader to, either because he was linking to his archive where the reader would go and see for themselves the claimant, and Mr Miller in particular, his own words in tweets, captured and put up, some of which we have been looking at, and, secondly, in relation to the -- I will move on to that in a minute. I do not want to overcomplicate it. So that is the broad factual substratum.

In relation to the other epithets which appear in the content warning, stressing again that only the content warning and those six or seven words are sued on, those also are supported directly by facts which are in the archive because they are a content warning and statements of opinion about what you would find if you went in there and looked, so it is the same point. You go into that archive and you see tweets by Mr Miller and the honest person looking at those tweets

could decide and hold the opinion that they were racist or homophobic or transphobic depending on which is the applicable one. So the evidence there so far as the court is concerned just has to be looked at to see if there is that sufficient nexus such that even a prank (?) could reach the conclusion that these were homophobic and all the rest of it and of course that is the test for the antisemitism; even a prank would be allowed to hold an opinion based on the facts available.
There is a secondary plank of facts in support of the antisemitism opinion which in our defence it is made clear are secondary, so you do not need to make findings about them and those are the facts and matters that we say show the association by the claimants with so-called far right or Alt-Right ideologies and individuals because, as you know, Mr Turner's own research led him to read around what these claimants seemed to be interested in and who they were associating with and to draw his own conclusion based on that that their campaign

was antisemitic and in the case of Ms Power that she was an antisemitic artworld figure, which is obviously a direct reference to the Mallouf context. And the facts and the ideas and individuals that are the key to that as the trial has developed and as has come out are obviously ParallaxOptics and Mr Stokoe, and the association with him and that account and the admission that it is abhorrent antisemitism and yet was only a friend and that part of the case, the same with Nick Land, the neo-reactionary individual who in his case Mr Miller would not admit that his public statements were antisemitic but Mr Turner's research and what he found about Mr Land through his own writings, and I went through some of it in cross-examination, led him to conclude further support for antisemitism was a flavour for the campaign of harassment. And again we say that that is an opinion which "a crank" even could reach. I am not casting any aspersions on my client. That is the test. And then generally the claimant's endorsement of far-right writers which came very clearly into

view through their private WhatsApp messages, we suggest, and their endorsement, although they denied it was an endorsement, but certainly Mr Miller's endorsement of Kevin McDonald, who admitted he is antisemitic, Nicholas Wade, who is an extreme replacement theory writer, Ron Unz.
So, if they are needed those facts, i.e. the fact of those associations and those connections between these claimants and that alt-right milieu of ideas is also there to support the opinion offence but the primary submission is that you do not even need it because you have enough in the tweets and the communications that were being targeted at Mr Turner and other people to draw the opinion - for the honest person to draw the opinion.
So, unless you have any questions on honest opinion, I shall deal very briefly with section 4. It has not really been very much challenged by the claimants, I think, in this case. Obviously, the question as to whether Mr Turner's statements, which are

complained about, were a matter of public interest is a question for your Ladyship, simply an objective question. We suggest that there cannot be much room for doubt, that a subject matter of the presence and fear of presence of antisemitism in the artworld is of high public interest and something to write about and that applies to all the tweets that mention antisemitism but we suggest it also applies to the tweets that do not explicitly mention it because those tweets were also in the context of someone experiencing what he regarded as an antisemitic campaign, and I do not think that that first question of the subject matter has been seriously challenged.
The second question on section 4 is whether Mr Turner believed that it was in the public interest to publish each of his statements in each of the tweets and the content warning. His evidence was very clear that he did believe that and he still did for those which are continuing online. It was not unduly clear to us what he was being challenged about on this. The approach seems to have been to accuse him of dishonesty over and over

again. It is not entirely clear, because it is not pleaded properly, what form of dishonesty it is. It has been suggested in the plea that there was a vendetta - this is in response to section 4 and I do not know if it is sought to extrapolate from that that there is a vendetta by Mr Turner and therefore he is dishonest. That does not follow.
Usually, the test of malice, if that is what is being run, is an absence of belief in the truth of what you are saying, or recklessness about it, but that has not been pleaded like that. So, as your Ladyship knows, we take a pleading point about this because it is important that malice is not just thrown around in a case without proper particularisation, so that is the first objection. If it is lurking there in response to section 4, we say because of this supposed vendetta, we just say that your Ladyship can see from Mr Turner's own evidence which he went about his research, the seriousness with which he took the whole situation he found himself in and his sincere desire to expose what he regarded as antisemitism in the artworld, including based

on his own experience, and that is not a good bedrock from which to draw a conclusion, we would submit, that Mr Turner is dishonest. It is also not a good basis for concluding that his belief that it was in the public interest to publish was not reasonable and we suggest that in all the circumstances it certainly was reasonable. He did not do what in conventional section 4 settings the courts often expect to see, which is to approach the claimants for a comment. I think we can all guess what might have happened in this case, but I think what he did was he was in a dialogue, something that Ms Power said several times that she was keen on. He was tweeting it was clear what he thought of what they were doing. What he got back from them was another double-barrelled invective each time, as I have just shown, and in that sense there would not have been any purpose to send to them, "Would you like to comment? I am going to say in this tweet the same thing I have been saying in the previous tweets" because he knew that their response would be the same

as indeed it was all the way along.
So, that is what we say on section 4.
Finally, damage and now I am talking about the counterclaim. I do not think I need to say much more other than that we rely on what Mr Turner said about the effect on him in his oral evidence. It was very, we suggest, compelling as to how far-reaching the effect of the harassment has been on him, how it has affected his life because he has not been able to work creatively in the way he used to; it has been hanging over him. We have heard evidence from his father to like effect. We suggest that this is a serious case of persistent, abusive harassment and it has a range of serious aggravating factors, perhaps the most important of which is the way that the proceedings have been conducted by the claimants from the moment that they began with their crowd funder - perfectly entitled to crowd fund but it generated yet more abuse for Mr Turner which we suggest was reasonably foreseeable but then more importantly to run a case accusing him of lying all the way through, including in the

trial itself, and also to seek to make something out of his family's finances in cross-examination and again a little bit I think to some extent in closing in a way which we suggest has just added to the upset, and certainly are aggravating factors.
So, on that basis I am not going to say anything about - we have dealt with the remedies position in our skeleton argument. If you are against us on the libel and you find for one or other of the claimants - you have seen what we have said. We think that there are multiple grounds for very, very low damages and we would ask if that be the situation we were in, to be able to put in further submissions perhaps after a draft judgment, or anyway for the hand-down.
In relation to the harassment tort, the priority for Mr Turner, if he were to succeed on that claim would be an injunction to ensure that the claimants cannot harass him in the future. He also seeks damages but as a measure of the seriousness of what has happened to him and also as a measure of, as I say, the aggravating features, and we have addressed

what we on this side would suggest was a reasonable figure, but it is premature to talk about such things. Obviously, one is expected to touch on these things at the end of the trial.
We would simply press upon your Ladyship that if he succeeds that it should be treated at the top band of the (inaudible) bands.
May I just turn my back for a moment?
(After a pause) My Lady, unless you have any further questions for me, those are my closing submissions.
MRS JUSTICE COLLINS RICE: Well, I have perhaps one question or invitation but before turning to that, I should in response to your final submissions, that is to say on remedies, it seems to me that the potential range of permutations of outcomes, I think it is inevitable that we will have to come back to remedies on any basis in due course, so I am not proposing to deal with that on any basis at this stage.
I just want to give you an opportunity, finally, to address the issue of the allegation that the first claimant was responsible for the

Hitlerian Disability publication, accepted to have been an allegation - well, ruled to have been an allegation of fact, accepted to have been untrue, the tweet up there for a number of months and so far as I am aware, nothing offered in the way of apology so I am just giving you an opportunity to address that cluster of issues.
MS EVANS: Yes, I think this is what we called tweet 6. Your Ladyship is correct that it is not defended as true. It is defended, however, as part of the section 4 and the reply to attack on the basis that those defences protect false statements so I say no more than that. They are in there. It is correct there has not been an apology but perhaps the most important thing to say in some ways is that there is no evidence of serious harm flowing from --
MRS JUSTICE COLLINS RICE: I understood that would be your position on that. Can you remind me whether I have any evidence of steps taken before the post and in the period before the post was taken down to research the truth or otherwise?

MS EVANS: Yes, we can give you the relevant paragraphs in my client's witness statement.
MRS JUSTICE COLLINS RICE: Thank you, and I will look it up.
MS EVANS: He does explain how he came to post it in the first place and how he came to discover it was incorrect. Just on serious harm, your Ladyship I know is aware of it but not only is there no specific evidence that addresses serious harm flowing from that but there is, we suggest, a very important responsive tweet from Mr Miller, "Laughing my arse off".
MRS JUSTICE COLLINS RICE: Yes, well I had not forgotten about that.
MS EVANS: No, I did not think you would have done, but we are just looking that up now.
MRS JUSTICE COLLINS RICE: Thank you.
MS EVANS: Mr Turner would be willing to apologise for that tweet. I think perhaps your Ladyship could understand why during the course of the wall[?] of harassment, he did

not feel inclined to do it. I am not going to put evidence in his mouth but he has heard what your Ladyship has said. He does not want to be unreasonable about it, obviously but yes, you are right, the first response is the serious harm response. The relevant paragraphs in Mr Turner's statement are 234 to 239.
MRS JUSTICE COLLINS RICE: I will look them up and remind myself.
MS EVANS: Thank you.
MRS JUSTICE COLLINS RICE: Well, thank you very much. I am most grateful. Thank you both for your written and oral submissions. They have been of great assistance and thank you again to all of the parties for giving me so much evidence under, in all cases, a deal of pressure. You have given me a lot to think about and I am going to go and take my time to think about it. I am going to look very carefully again at all of the evidence and reflect on the legal submissions that have been made to me, and of course I am reserving judgment.
MS EVANS: Thank you, your Ladyship.

(15.13)

(The hearing adjourned)

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